













Regional Oral History Office  
The Bancroft Library

University of California  
Berkeley, California

California Water Resources Oral History Series

Thomas J. Graff and  
David R. Yargas

THE PASSAGE OF THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT, 1991-1992:  
ENVIRONMENTAL DEFENSE FUND PERSPECTIVE

Interviews Conducted by  
Malca Chall  
in 1994

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Thomas Graff, ca. 1991





David Yardas, 1994



Cataloging information

GRAFF, Thomas (b. 1944)  
YARDAS, David (b. 1956)

Environmental Defense Fund Attorney  
Water resources analyst

Passage of the Central Valley Project Improvement Act, 1991-1992:  
Environmental Defense Fund Perspective, 1996, iv, 133 pp.

Joint interview discusses Environmental Defense Fund, national and regional; research and policy related to California water issues: Auburn and New Melones dams, peripheral canal, Metropolitan Water District-Imperial Valley Irrigation District, Mono Lake, water transfers, water marketing; relationship of Truckee-Carson-Pyramid Lake Water Rights Settlement Act to CVPIA; role of EDF, National Resources Defense Council, Share the Water, business interests in passage of CVPIA; writing and revising Miller-Bradley and Seymour bills; pressure from farmers, environmentalists, business leaders; use of media.

Interviewed in 1994 by Malca Chall for the California Water Resources Oral History Series. Regional Oral History Office, The Bancroft Library, University of California, Berkeley.





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## PREFACE

The Water Resources Center of the University of California, in 1965, established a History of California Water Resources Development Oral History Series, to be carried out by the oral history offices at the Los Angeles and Berkeley campuses. The basic purpose of the program was "to document historical developments in California's water resources by means of tape recorded interviews with men who have played a prominent role in this field." The concern of those who drafted the program was that while the published material on California water resources described engineering and economic aspects of specific water projects, little dealt with concepts, evolution of plans, and relationships between and among the various interested federal, state, and local agencies.

To bridge this information gap, the Water Resources Center, during the past quarter century under the successive direction of Professors Arthur F. Pillsbury, J. Herbert Snyder, and Henry Vaux, Jr., has provided funding in full or in part for interviews with men who have been observers and participants in significant aspects of water resources development. Early advisors to the project on the Berkeley campus were Professors J. W. Johnson and David K. Todd. Gerald Giefer, librarian of the Water Resources Center Archives, Berkeley, has maintained an important advisory role in the project.

Interviewees in the Berkeley series have been pioneers in western water irrigation, in the planning and development of the Central Valley and California State Water Projects, in the administration of the Department of Water Resources, and in the pioneering work of the field of sanitary engineering. Some have been active in the formation of the San Francisco Bay Conservation and Development Commission; others have developed seminal theories on soil erosion and soil science. But in all cases, these men have been deeply concerned with water resources in California.

Their oral histories provide unique background into the history of water resources development and are valuable assets to students interested in understanding the past and in developing theories for future use of this essential, controversial, and threatened commodity--water.

Henry J. Vaux, Jr., Director  
Water Resources Center

January 1989  
University of California, Riverside



SERIES LIST

April 1996

The following Regional Oral History Office interviews of have been funded in whole or in part by The Water Resources Center, University of California.

- Banks, Harvey (b. 1910)  
California Water Project, 1955-1961. 1967 82 pp.
- Gianelli, William R. (b. 1919)  
The California State Department of Water Resources, 1967-1973.  
 1985, 86 pp.
- Gillespie, Chester G. (1884-1971)  
Origins and Early Years of the Bureau of Sanitary Engineering.  
 1971, 39 pp.
- Graff, Thomas J.(b. 1944) and David R. Yargas (b. 1956)  
The Passage of the Central Valley Project Improvement Act, 1991-1992:  
Environmental Defense Fund Perspective. 1996, 136 pp.
- Harding, Sidney T. (1883-1969)  
A Life in Western Water Development. 1967, 524 pp.
- Jenny, Hans (1899-1992)  
Soil Scientist, Teacher, and Scholar. 1989, 364 pp.
- Langelier, Wilfred F. (1886-1981)  
Teaching, Research, and Consultation in Water Purification and Sewage Treatment, University of California at Berkeley, 1916-1955.  
 1982, 81 pp.
- Leedom, Sam R. (1896-1971)  
California Water Development, 1930-1955. 1967, 83 pp.
- Leopold, Luna B. (b. 1915)  
Hydrology, Geomorphology, and Environmental Policy: U.S. Geological Survey, 1950-1072, and UC Berkeley, 1972-1987. 1993, 309 pp.
- Lowdermilk, Walter Clay (1888-1974)  
Soil, Forest, and Water Conservation and Reclamation in China, Israel, Africa, and The United States. 1969, 704 pp. (Two volumes)
- McGaughey, Percy H. (1904-1975)  
The Sanitary Engineering Research Laboratory: Administration, Research, and Consultation, 1950-1972. 1974, 259 pp.

Nelson, Barry (b. 1959)

The Passage of the Central Valley Project Improvement Act, 1991-1992:  
Executive Director, Save San Francisco Bay Association. 1994, 88 pp.

Peltier, Jason (b. 1955)

The Passage of the Central Valley Project Improvement Act, 1991-1992:  
Manager, Central Valley Project Water Association. 1994, 84 pp.

Robie, Ronald B. (b. 1937)

The California State Department of Water Resources, 1975-1983.  
1989, 97 pp.

The San Francisco Bay Conservation and Development Commission, 1964-1973.

Interviews with Joseph E. Bodovitz, Melvin Lane, and E. Clement Shute.  
1986, 98 pp.

For other California water-related interviews see California Water Resources list.

## INTERVIEW HISTORY--by Malca Chall

Momentous shifts in social policy often seem to arrive on the scene without a history. On close inspection, one finds that people have worked, perhaps for decades, on a concept that now works its way into our consciousness. So it was with the Central Valley Project Improvement Act (CVPIA), that significant transition in California water policy history which was signed into law by President George Bush in 1992. In 1993, the Regional Oral History Office initiated an oral history series, the Passage of the Central Valley Project Improvement Act, 1990-1992, to document this important legislation. The series began with interviews with Jason Peltier and Barry Nelson, and now moves on to Thomas Graff and David Yardas.<sup>1</sup>

In this oral history, Thomas Graff and David Yardas, key players in the legislative process leading to passage of the CVPIA, bring to life the exciting behind-the-scenes activities and personalities involved with the pros and cons of the legislation, including some of the intellectual and political background which shaped the final Omnibus Water Act.

Thomas Graff, a senior attorney with the Environmental Defense Fund (EDF) in Oakland, California, was hired by the fledgling national EDF board in 1971 to help organize the northern California office. Early concerns dealt with pesticides, but eventually Mr. Graff focused on such environmentally and politically sensitive issues as the Auburn and New Melones dams, the San Francisco Bay/Delta Estuary, the Peripheral Canal, Mono Lake, and the Imperial Irrigation District.

From as early as 1981, Tom Graff, along with others on the EDF staff, began studying, writing, and speaking on the possibilities of using market forces to accomplish environmental goals. Or, as he headlined an op-ed piece in the Los Angeles Times, "Water is a Commodity, So Let's Treat it as One."<sup>2</sup> Scores of articles and the testing of this theory in the Imperial Valley and Mono Lake set the tone for the debates during the following decade.

David Yardas began his career with EDF in 1986 working on the Rural Economy and Environment Program (REEP), a new Ford Foundation Program. This led him to the Pyramid Lake, Nevada, (water/land) controversy, a case possibly falling under the REEP initiative. The result was the 1990 Truckee-Carson-Pyramid Lake Water Rights Settlement Act. This involved water transfers, a water rights acquisition program, and associated

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<sup>1</sup>The series will continue with Daniel Beard and Richard Golb interviews.

<sup>2</sup>Zach Willey and Thomas Graff, Los Angeles Times, February 5, 1984.



revisions in the Newlands Project--the oldest federal reclamation project in the West. Mr. Yardas explains that some of the ideas for the complex Pyramid Lake decision were an outgrowth of the Metropolitan Water District-Imperial Irrigation District approach--"the idea that the urban sector could come in and invest in conservation in an agriculture project and reap the benefits of conserved water." This concept had been worked out during the 1980s by Tom Graff and Zach Willey, his EDF colleague.

During David Yardas's Nevada period, he met Senator Bill Bradley (chair of the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources) and Tom Jensen, his chief aide for water policy, when they became interested in the Pyramid Lake reclamation project. Consequently, Jensen and Yardas developed a strong and trusting relationship which proved highly valuable when Senator Bradley and Jensen turned their attention to the Central Valley Project.

By mid-1991 various sectors involved with CVP reform were in place. Senator Bradley had focused on California water policy and reform of the Central Valley Project, and had introduced a bill entitled the "Central Valley Project Improvement Act." Congressman George Miller, now chair of the House Committee on Natural Resources, had proposed another of his many bills to restore fish and wildlife to the Upper Sacramento River and revise time limits for renewing CVP contracts. The environmental community, joined by some major business interests, had organized for action in favor of the legislation redefining the mission of the CVP which required agriculture to share water with fish and wildlife and the urban needs of California's growing cities and towns. Finally, Graff and Yardas were proposing water marketing as an impetus to conservation and reform.

At the same time, the Central Valley Project Water Association contractors and others in the agriculture/water community were writing their own bills to deal with the problems of the Central Valley Project. Strongly opposed to Miller's and Bradley's ideas, they tapped Senator John Seymour to carry their legislation. Mr. Seymour had been appointed to fill the term of Senator Pete Wilson following his election as governor of California.

Add to this mix the Omnibus Water Act, loaded with some thirty special water-related projects intensely sought by congressmen in twelve other western states. George Miller had held back this act for a number of years until it included a section on Central Valley Project reform. The scene was now set for a major water reform struggle in and outside of Congress.

This oral history takes us step by step through the two-year effort to reform and restructure the Central Valley Project. We follow in close detail the rationale behind revisions in the Miller-Bradley bills, the innumerable hearings in California and Washington, D.C., and the attempts to meet with Senator Seymour and CVP contractors to work out a compromise. We learn of the efforts to influence the media, of the emotional lows and highs as the Central Valley Project Improvement Act



legislation moved through the committees and on to the floors of the House and Senate. When a reluctant President Bush signed the Omnibus Water Act which included the CVPIA, the environmental community could savor victory.

To prepare for this interview, I met with Mr. Graff on September 13, 1994 to consider what key aspects of this history he wished to cover in two recorded interview sessions. The story of the CVPIA, he claimed, would be incomplete without the details and amplification provided by his colleague David Yardas who had had an important role in negotiating and writing key aspects of the legislation.

A joint interview, although unusual, had worked well for the oral history with three founders of the Save San Francisco Bay Association, so it was agreed that David Yardas would join the sessions with Tom Graff.

At this and subsequent meetings, Tom Graff gave me copies of memos, testimonials prepared for committee hearings, letters, drafts of bills, and newspaper and journal articles dealing with the history of the CVPIA and water marketing.

The interviews took place in the spacious conference room at EDF headquarters in Oakland, for two hours on October 10 and three hours on November 16, 1994. Both men were careful to present the facts as accurately as possible and the recollections of their own emotions and attitudes during these eventful two years. They bantered and bounced details, anecdotes, and questions off of each other. Mr. Graff brought in old calendars to help ensure accuracy of dates, places, and people. He also made notes of topics he wanted to discuss. David Yardas brought in binders in which he had organized chronologically the many drafts of the Miller-Bradley bills and other pertinent legislation. Their friendship and mutual respect were apparent throughout this interview.

The collaboration continued as each read and checked for accuracy the lightly edited transcript. They answered questions and added information I thought useful.

Copies of some of Graff's material have been placed where relevant with the interview; others are in the appendices. The entire document collection will be deposited in the Water Resources Center Library on the Berkeley campus. It supplies a rich resource for those studying the background of the CVPIA as well as the EDF's successful ventures in Mono Lake and the Imperial Irrigation District.

Mr. Graff seemed cautiously optimistic about the future of the CVPIA now that the Republicans are the majority party in the Congress and both Bill Bradley and George Miller have lost their influential committee posts. Some of the changes, he claimed, were structural, not mere products of personalities. Public attitudes about the environment had been important to the passage of the CVPIA and environmental legislation during the past decades. "Now," he said, "public attitudes could shift back. And maybe they have. Maybe property rights in some sense are more

important than endangered species in many people's view. One thing I've always wondered about: whose property is water? That's a very complicated concept. The answer to that is very complicated. But we'll need to wait for another interview someday to get into that whole area."

Funding for these interviews came from the Center for Water and Wildland Resources of the University of California at Davis. Professor Don Erman, the Center's director, understood the importance of documenting the history of the landmark Central Valley Project Improvement Act.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Willa K. Baum, and is an administrative division of The Bancroft Library of the University of California, Berkeley.

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Interviewer/Editor

December 1995  
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I OVERVIEW OF THE BEGINNING EFFORTS TO DRAFT THE CENTRAL VALLEY  
PROJECT IMPROVEMENT ACT: THE INVOLVEMENT OF THOMAS GRAFF,  
DAVID YARDAS, AND THE ENVIRONMENTAL DEFENSE FUND

[Interview 1: October 10, 1994] ##<sup>1</sup>

Thomas Graff: Personal Background and Career Path with the  
Environmental Defense Fund

Chall: What I wanted to learn from you first is the route by which you arrived where you are now. As I understand it, you're counsel with the EDF [Environmental Defense Fund]. What is your exact title?

Graff: Well, it's fluctuated over the years, but the current title that I use is senior attorney. From time to time I've used regional counsel, spelled s-e-l. Those are pretty much the two. Occasionally, I'm referred to as the director of this office, but that's technically not accurate, even though I'm the senior person here and have sometimes served in a quasi-management function.

Chall: Senior person meaning you have--

Graff: I have been here the longest.

Chall: How long has that been?

Graff: 1971. Two colleagues and I started the California office of EDF in the summer of '71.

Chall: As an attorney with the fund?

Graff: Well, it was quite a young organization. EDF was formed in 1967 on Long Island in New York, and three years later opened a D.C. office, and only a year after that opened the California office.

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<sup>1</sup>## This symbol indicates a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.



They did a sort of unusual thing of interviewing for three professional positions separately, and hired each of the three people with whom they staffed the office separately. The three of us thrown together became essentially partners in creating an EDF West Coast presence.

### Education and First Professional Positions

Chall: What background do you have, and where did you come from to get here?

Graff: Well, I don't know exactly what of the background you want to know about, but in terms of schooling--

Chall: Yes.

Graff: I graduated from Harvard College in 1964, and from Harvard Law School in 1967. I majored in American history as an undergraduate. My degrees in both cases were magna cum laude, and in the case of the law school, I was an officer, the treasurer, of the *Harvard Law Review*.

After law school, I was awarded a fellowship called the Frank Knox fellowship awarded by Harvard University and spent a year acquiring a master of laws at the University of London, London School of Economics. It was mostly a fun year rather than a particularly rigorous academic year.

The year following that, 1968-69, I served as a clerk to Judge Carl McGowan of the United States Court of Appeals for the D.C. circuit. It was a wonderful experience. He was a terrific guy who was a great judge and also had an interesting political history. He had been administrative assistant to Governor [Adlai] Stevenson of Illinois and had a lot of interesting stories to tell about Illinois politics over the years. He'd also been campaign manager for Stevenson in his unsuccessful first presidential run. He also had been a professor of law at Northwestern and a practicing lawyer prior to being appointed by President [John F.] Kennedy to the court of appeals.

Then in 1969-70, I served as a lobbyist for the city of New York on the staff of then-mayor John Lindsay in D.C. During all that time, the Vietnam conflict was underway, and I was in various stages of potentially going to be drafted by my local draft board, but it never happened. By the time I was halfway through my year of lobbying for the city, I turned twenty-six, and that was also

the year of the first lottery, and I got a good number, a non-draftable number.

So at that point, my then-wife and I decided to abandon the East Coast. [Richard M.] Nixon by then was president, and Washington didn't hold a lot of appeal. Other Eastern Seaboard cities we excluded for various reasons. So I came out to California to interview at law firms, and chose what was then the Howard, Prim, Smith, Rice, & Downs firm in San Francisco. It's now the Howard, Rice, Nemerovski, et cetera firm. I joined them in the summer of '70.

About a little less than a year later, I got a letter that I guess would change my life. I got the letter from a man named Bill Butler, who was then a fairly new lawyer for EDF in D.C. saying he'd been referred by a mutual acquaintance, a fellow named Chuck Fabrikant, who at the time was special assistant to then-EPA administrator [William] Ruckelshaus, and who had been a co-clerk with me. He had been clerking for Judge [Harold] Leventhal when I was clerking for Judge McGowan. Bill asked me whether I knew people in the Bay Area who might be interested in starting the EDF office, and I volunteered myself.

I happened to have a business trip to D.C. shortly thereafter. I interviewed quickly with him and with the people in EDF's headquarters out on Long Island, and about a year after I joined the Howard, Prim firm, I left the firm to help start the EDF office.

Chall: Haven't regretted the move at all?

Graff: No, I haven't. But contrary to what's probably the case today, I had essentially no environmental background whatsoever, a little bit of public interest background, a couple of cases that I had taken on during the year I was at Howard, Prim, but other than that it was mostly my academic record or perceived promise or something that caused them to hire me.

### The Founders of EDF

Chall: The people who started EDF, were they environmentalists?

Graff: Yes, they were. I can give you some interesting histories of EDF. The founders were primarily a group of birders out on Long Island who had seen the osprey decline precipitously during the previous decade or so, and who saw the spraying of DDT as the principal

culprit, and decided to try to do something about it. They realized that simply displaying their scientific knowledge about what had transpired was not going to be enough to turn around public policy, so they hired a lawyer initially, and then shortly thereafter, incorporated. An effort to initially stop spraying of DDT on Long Island quickly spread elsewhere in the country, and finally--I don't know about finally, but as of today, has mushroomed into a more than \$20 million a year national operation with six or seven offices and a diverse portfolio of activities.

But when I started, which was only a few years after its beginning in 1967, pesticide use and water projects, which were two of the major problems for wildlife, and particularly for aquatic wildlife, were major priorities. This was the concern even before our office began. So even though there was no real direction as to what environmental problems we should tackle when we started the office out here, the combination of the prior interest in water projects which EDF had already been fighting elsewhere in the country, and the interest of one of my colleagues, Jerry [Gerald] Meral, led us into the water and pesticide directions.

I might point out that Meral fits into this story in various ways over the years. He was an active rafter, actually canoeist, whitewater canoeist, and he was already engaged on a personal level in fighting the New Melones Dam on the Stanislaus River. So that became one of our major early activities, trying to stop the construction of New Melones.

Chall: Were you given sort of carte blanche about what you were going to do in California?

Graff: In nominal terms we were certainly asked to work on pesticides and on water. In those days, the executive committee of the board played a quite active role in reviewing in detail activities of the staff, but most of the initiatives were staff-generated, with approval from the then more active--I don't know about more active board, but a board more immediately engaged in the substance of the organization. And over the years, the board has evolved into being more of a conventional board, where they set broad policy but don't get involved nearly as much in particular details.

Chall: Was the first board really located close to the home base?

Graff: Yes. They were scientists at the State University of Stonybrook, at the Brookhaven National Lab. In one case, Art Cooley, who's still a board member, was a high school biology teacher, I think at Belleport, Long Island. And so that area, that community, spawned most of the original board members, or at least the most



active original board members. Charlie Wurster and Bob Smolker, who has since passed away, came from SUNY, Stonybrook, and Dennis Puleston and Roger Craig, who eventually moved away, from Brookhaven. I guess George Woodwell was then at Stonybrook; he's now I think at Woods Hole Lab. Those were among the founding trustees, board members.

Chall: So, now you're here.

Graff: So jump twenty-five years, almost. [laughter]

Chall: You had moved into the Bay Area.

Graff: Yes. I had been in the Bay Area for a year, in fact, lived in San Francisco and reverse-commuted for a year or so before moving to the East Bay.

#### The Early Years of EDF in the San Francisco Bay Area: Water-Related Cases

Chall: Was the office initially set up in the East Bay? Was it in Berkeley?

Graff: It was set up in Berkeley, quite near campus, on Durant, in a converted sorority house that was owned by that time and operated by the Wright Institute, which is an alternative psychology graduate program. They had extra space up on the top floor, and that's where we set up the office. Stayed there for about a half-dozen years, maybe, and then we moved to Dwight Way, also in Berkeley, in an office building that was rented out by the Baptist Seminary of the West, kind of kitty-corner from People's Park. That area eventually became not very attractive, as People's Park degenerated, and about seven years ago now, we moved here, to north Oakland.

Chall: So what was your early background, then, on water issues, besides the New Melones?

Graff: Well, actually within the first year and a half, about a year, from the time we opened the office, we filed several lawsuits--well, a lawsuit and an administrative proceeding dealing with the Stanislaus River and New Melones and a lawsuit against East Bay MUD, East Bay Municipal Utility District, the local water purveyor and handler of sewage. And in fact, the East Bay MUD case is still alive today. It went twice to the California Supreme Court, once to the U.S. Supreme Court, and then eventually after many

years was tried twice over, once by the water board and once by a local superior court judge.

Chall: What's the case?

Graff: There were really two major claims, one of which kind of fell off during the course of all the pre-trial maneuvering, and one of which was eventually tried. The part that fell off was that we argued that East Bay MUD should reclaim water to a greater degree than it did, so as to conserve the water resource eventually.<sup>1</sup> They've done quite a bit of it, but the state court of appeal on the first time up through the system ruled that that claim was-- actually, I guess it was the California Supreme Court that ruled that that claim should have been handled as an administrative matter by the water boards, and we never again took it up before the water boards, so it was dismissed.

But the part of the case that went on for many years, for two decades, was a claim that East Bay MUD should divert a supplemental supply, if at all, from the American River downstream rather than upstream so that the water could be placed in multiple use, for fisheries and aesthetic and recreational values. The water board essentially dismissed that claim, said East Bay MUD could divert according to its contract with the Bureau of Reclamation, but Judge [Richard] Hodge in a decision in the late eighties--'89, '90, I can't remember exactly--ruled that--kind of split the baby in half--said that East Bay MUD could divert upstream, but only in wet years, or when there was an excess of water in the river.<sup>2</sup> And that's still a local controversy.

So that was one that I got involved in. I handled it pretty much exclusively within EDF for the first decade or so, and then eventually others have come into it.

The New Melones case was primarily handled by the other lawyer that we started together with, Michael Palmer, and I sort of second-chaired that. That involved not only a legal campaign in the courts on the adequacy of the original environmental impact statement for New Melones, but a water board proceeding trying to restrict the amount of water that could be used by the Bureau of Reclamation from the Stanislaus, which we hoped would preclude the construction of the dam, but didn't.<sup>3</sup>

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<sup>1</sup>EDF v. EBMUD, 20 Cal. 3d. 327 (1977), vacated by 439 U.S. 811 (1978), decided again as 26 Cal. 3d. 183 (1980).

<sup>2</sup>Not reported (case #425955, Superior Court, Alameda County).

<sup>3</sup>D. 1422.

And then there was a political campaign that Jerry Meral, our scientist colleague, was heavily involved in. He was sort of the main original promoter of what became Prop., what was it, 17? I can't remember, in 1974.<sup>1</sup> It was a salient feature of the gubernatorial race between Jerry Brown and Houston Fluornoy, in fact, one of the few issues that they publicly disagreed about.

And then the other case that I was heavily involved in was the suit we filed against the Auburn Dam in 1972, together with NRDC, the Natural Resources Defense Council. We included John Leshy of NRDC, who's now solicitor of the Interior, and I, with Jerry Meral's active help, and Dr. Phillip Williams. Williams is a hydrology consultant who's gone on to do many good things for environmental groups on a variety of water-related issues, including Mono Lake and the Owens River and various others--American River--for many, many years. We originally persuaded Judge [Thomas J.] MacBride in the U.S. District Court for the Eastern District in Sacramento that the EIS [environmental impact statement] was inadequate, but he declined to enjoin the dam's construction. Eventually the feds filed another EIS which was held adequate. But then the earthquake happened at Oroville, and eventually Auburn for a lot of reasons didn't get built.

So Auburn, New Melones, East Bay MUD were our three big early efforts, and as you've already heard, were largely attacked on a litigation basis.

Now, the one other major activity in the early years which Jerry handled, and then I sort of took over starting in 1975, was to look at Delta issues. He became a member fairly soon after the starting of the office--I'm not sure exactly when--of the Delta Environment Advisory Committee, created by the then-Reagan administration in Sacramento, to look at what should be done about facilities in the Delta and other matters.

In 1974, November of '74, I took a leave from EDF to join the transition staff of Governor-elect [Jerry] Brown, served there for a little less than two months, helped him set up the environmental and resources sides of his new administration, and then returned to EDF. A few months later, Ron Robie was selected as director of water resources. There's some good stories I can tell about those few months.

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<sup>1</sup>Proposition 17. To add sections of the Stanislaus River to the state wild-rivers system; to prevent construction of the proposed New Melones Dam, November, 1974.

But the upshot of that was immediately after Robie's being selected--in fact, I think the next day--he called Jerry and asked Jerry to come up as his deputy, and Jerry left EDF--in May or June of 1975.<sup>1</sup> The Delta Environment Advisory Committee was continued, and I stepped in to replace him on that committee.

### The Split in the Environmental Community Over the Peripheral Canal, 1976-1982

Graff: A year or so later, in May of 1976, in somewhat of an historic meeting of that committee, most, essentially all of my colleagues who were there, voted to support the Brown-Robie-Meral Peripheral Canal program, and I dissented. There then ensued a quite vigorous internal debate within the environmental community over what to do about that program, which evolved over the next four years into two sets of state legislative battles, both separate bills by State Senator [Ruben] Ayala.

Originally, the Sierra Club and the Planning and Conservation League, probably the two most significant local statewide forces in the environmental movement, supported the Brown program. By the end of that period, they opposed it. Within the Sierra Club, there was a national referendum as to what to do about the Sierra Club's position on the canal and related matters. I wrote the piece in the Sierra Club magazine opposing the support of the club for that program.

I was also on the PCL [Planning and Conservation League] board, and we had a big showdown at the PCL board, which essentially split the board almost in half, and although the board briefly continued to support the program, they essentially--within a year, had flipped and became opponents.

And through the late seventies into the early eighties, a lot of what was going on here at EDF was opposition to the plan. A lot of our opposition beginning in '77 was premised on what was emerging at the federal level as a major shift in federal water policy. Jimmy Carter had come in to office at the presidential level and had, as you might recall, opened his administration in the first few months with his infamous hit list of projects, which included Auburn Dam among them.

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<sup>1</sup>Ronald B. Robie, *The State Department of Water Resources, 1975-1983*, Regional Oral History Office, University of California, Berkeley, 1989.

One of our guiding principles was that, with the federal administration leading the way in redefining how water policy should be pursued, it was the wrong time to endorse, albeit an environmentally dressed up, continuation of the past water policies in California. Now, the opposing point of view, of course, was that those environmental bells and whistles were important enough to support even the construction of the Peripheral Canal, and that's why--obviously there was a lot of difference.

By the time it got to referendum in '82,<sup>1</sup> the environmental movement was almost uniformly opposed, and in the Bay Area, the votes, I think the minimum anti vote was 89 percent in Santa Clara County, and it went all the way up to something--I think it was 96 percent in Marin, which are votes reminiscent of the Soviet Union. [laughter]

Chall: In southern California there was a break among the growers, wasn't there?

Graff: Yes, we split the growers. The Boswell and Salyer firms joined us, and even within southern California, we got large numbers of votes, largely on economic grounds.

And one of the parts of the story that I guess I wanted to get into with you, a major element in that campaign was that I worked pretty closely with unusual kinds of people, at least from my perspective, Boswell and Salyer and their representatives, for example. I became quite friendly during that campaign with Doug Watts, who was a partner in what was then Russo Watts, eventually became Russo Watts & Rollins. He was a major conservative Republican political consultant. He also eventually ran the last month of the [George] Deukmejian for governor campaign in the same year, that was '82, which defeated [Tom] Bradley for governor. I became pretty good friends with Doug, also ended up spending a lot of time with southern California editorial boards, which I probably would never have done otherwise: with the *Orange County Register* and the San Diego newspapers and various other quite conservative, as well as not-so-conservative, papers down there.

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<sup>1</sup>Proposition 9, referendum to authorize construction of the Peripheral Canal and other water facilities, June, 1982.



**The Evolving EDF Advocacy Policy: Innovative Directions of the Staff**

Graff: So I don't know what came first, but in terms of the evolution of EDF's political thinking, we became much more comfortable with the idea of collaborating, when appropriate, and working with interests who in many other contexts would be considered antagonistic. Just looking at it from a personal point of view, the sort of prototype of how to do the job that we were doing at EDF when we started in the early seventies was Ralph Nader. His modus operandi was always to hold the opposition and the special interests at arm's length, to take what seemed from my perspective always to be sort of a purist approach.

And I think the evolution over the course of the twenty years that I've been doing this job has been away from that concept to a more pragmatic one of finding allies wherever they might reside, and always on a personal level essentially keeping lines of communication open with all kinds of different interests. When we eventually get to our Miller-Bradley story, I think that's significant, in that we ended up with alliances in that struggle with the big urban water districts, with the California Business Roundtable, and had fruitful negotiations with the representatives of agribusiness. And I think all that would not have been possible if we, and I personally, had stayed in the mode of, "It's us against them, and we're doing battle with the bad guys."

Chall: Well, EDF seems to be in the forefront of this whole idea of collaboration. I've wondered whether it's only here, or have you moved that into the center of EDF?

Graff: I think my colleagues, Zach Willey and David Roe and I, were instrumental in helping bring EDF around to that set of approaches.

Chall: That's EDF not just here but nationally, the whole EDF?

Graff: Right. In fact, I brought--I don't know how many of these documents you actually want to carry along with you--but we made a set of writings for you both of ours and of others going back to 1981, which show some of the evolution of this thinking. Some of it is ours. There's a piece in here by Fred Krupp, our executive director, in 1986, which set the stage for this.<sup>1</sup> That followed, in fact--no, that was followed shortly thereafter by a piece in

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<sup>1</sup>Frederic D. Krupp, "New Environmentalism Factors in Economic Needs," *The Wall Street Journal*, November 20, 1986.

the *L.A. Times* on the so-called third wave of environmental advocacy, which I had a major hand in prompting.<sup>1</sup>

So there's an evolution. It looks in retrospect a lot more organized than it probably was, as it in fact evolved. Zach and David and I got involved in the mid-seventies. I should say, when Jerry Meral left, he was replaced by Zach Willey, who is a Ph.D. economist. It's really Zach's insights on the value of economic approaches to solving environmental problems that have probably been intellectually at the heart of the work we've done in water in the two decades that followed. David came on board as the other lawyer in the office a year later, 1976--

Chall: His last name was what?

Graff: R-o-e, and he soon inherited from me energy--I was sort of carrying two portfolios, water, and electricity--and energy, at that time. Some of our major successes took place in electricity and energy in the period of the late seventies and early eighties. In fact, David wrote a book called *Dynamos and Virgins*, which I didn't bring but I can give to you, recounting our battles--

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Graff: --from '75 on, together. Although water marketing was an idea that had been promoted by various economists and others for several decades prior to when Zach picked it up, it was Zach's push that encouraged us to keep working on that. In fact, in 1983, we published a major report written by a fellow by the name of Rob Stavins, who at the time was a young kind of itinerant researcher who later went on to get his own Ph.D. in economics at Harvard and is now a professor at the Kennedy School at Harvard. He later on became the coordinator and principal editor of something called Project 88, which was a report commissioned by Senators [Timothy] Wirth and [John] Heinz, Democrat and Republican, respectively, from Colorado and Pennsylvania, and which produced the work that became the grounding of the acid rain provisions in the Clean Air Act of 1990.<sup>2</sup>

Project 88 was written with the idea that whoever was elected in 1988, November '88, would hopefully take this new set of ideas about using economics in the environment seriously. It happened to be [George] Bush who was elected, and in fact shortly after the

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<sup>1</sup>Roberta A. Jones, "'3rd Wave' Alters Course of Environmental Movement," *Los Angeles Times*, December 22, 1986.

<sup>2</sup>"Project 88: Harnessing Market Forces to Protect Our Environment."

November election, even before Bush was inaugurated, one of his principal aides, Boyden Gray, who became counsel to the president, approached EDF and asked for our help in designing an acid rain control program for the Bush administration.

So there is a sort of an intellectual progression here, and a number of personalities who started or were active in our office moved on to other places, Stavins being a key one of those.

Chall: That's very interesting evolution here.

### The Metropolitan Water District and the EDF Concept for the Imperial Valley

Graff: And Stavins is--yes, I should give you that, too. The report he wrote promoted the idea that the MWD--the Metropolitan Water District of Southern California had been telling people through the late seventies into the Peripheral Canal campaign of the early eighties that they were about to be cut off from half or more of their water supply from the Colorado River--could replace that supposed loss or perceived loss with an investment in conservation measures in the Imperial Valley.

Chall: Oh, it came from that?

Graff: And that did indeed come to pass. In fact, some of these early pieces recommend that in various forms.

During the course of promoting that, we became obviously very entangled or entwined with MWD. I still recall when the report was nearly complete and we took it, Stavins and I--or maybe it was Zach and I, I can't remember--to a meeting at MWD with then-assistant general manager Dave Kennedy and then-chief counsel Carl Boronkay, and asked them if they wanted to review it before it was published. They both kind of blanched and decided that that was not in their interest, and declined to review the report before its publication. [laughs]

And of course, they both moved on to bigger and better things--Boronkay as general manager of MWD, and Kennedy as director of the Department of Water Resources in Sacramento.

Chall: They finally accepted the Imperial Valley concept?

Graff: Well, eventually, yes. I didn't get you all the press, but Boronkay, in fact, was originally reported by a very enterprising



# Antidote to Our Doom Affliction

By THOMAS J. GRAFF

In the past year the environment has returned to prime time. International concerns about potential global warming, accelerating destruction of tropical rain forests and a gaping hole in the stratosphere above Antarctica gripped people and nations around the world. The networks and newspapers have been full of stories of gloom and doom—medical wastes closing East Coast beaches, tanker spills, and pesticides and poison scares causing consumer and regulatory panic. The impression persists of a planet reeling out of control, with potentially terrifying consequences just over the horizon.

We need antidotes to this affliction. No doubt fear and anger are great mobilizers of public passion and an aroused public will be necessary to marshal the resources, financial and political, required to address the problems we face. But such mobilization of public passion is not enough. We also need public policies and social compacts that will attain environmental objectives with relatively little conflict and at lower cost.

It is here that a recent report issued by two U.S. senators, Timothy Wirth (D-Colo.) and John Heinz (R-Pa.), may turn out to have a greater positive impact on our planet's future than all the scare stories that have dominated the news. Titled "Project 88: Harnessing Market Forces To Protect Our Environment," the 130-page study addresses subjects such as global and domestic air pollution, energy, water resources and solid and hazardous wastes.

It does not, however, purport to be all-conclusive. Instead it applies a unifying theme to seven sets of major environmental problems: the use of economic criteria or market forces as a means of accomplishing desired environmental goals at the least cost.

A group of more than 50 environmentally concerned Americans, including environmentalists, industrialists, bureaucrats and aca-

demics, led by Prof. Robert Stavins of Harvard University, worked under the senators' direction. What they produced was a bipartisan, wide-spectrum consensus supporting economic incentives as a preferred means of accomplishing environmental goals.

The report acknowledges that both public and private spending for pollution cleanup and resource preservation will be constrained in a time of severe budget deficits and increasing international competitiveness. But it counters that economic or market-based incentives will provide more pollution reduction and more efficient and environmentally sensitive resource allocation than government-imposed controls, at any level of public or private expenditure.

Of course, using economics to foster environmental improvement is not a new idea. Less than a decade ago, spurred on by environmentalists and regulators, California's leading public utilities, Southern California Edison and Pacific Gas and Electric, surprised their industry when they abandoned the construction of large coal and nuclear power plants in favor of economically and environmentally superior alternative measures. Now their approach is common wisdom around the country, if not the world.

Similarly, earlier this year, two of California's leading water utilities, the Metropolitan Water District of Southern California and the Imperial Irrigation District, announced a swap of conservation investment for water. This water-marketing arrangement signals that the highest levels of the Western "water industry" have also come to appreciate that sound economics should be a key determinant of the future of water development in the American West.

Such success stories need not be limited to domestic energy and water issues. A market approach limiting the total production and use of chlorofluorocarbons holds great promise as the most efficient means of reducing the threat these ozone-depleting chemicals pose to the Earth's stratosphere.

Economic incentives to plant trees may go a long way to offset the carbon dioxide emissions that contribute to the greenhouse effect. "Debt for conservation" swaps are a promising means to protect tropical rain forests. And allowing polluters to trade strictly limited amounts of emission rights for a range of widely dispersed air pollutants is a worthwhile strategy to address regional air-pollution problems. It is also a possible avenue to breaking the political stalemate that has blocked legislation to control acid rain.

On the other hand, one should be careful not to claim too much for the economic approach. Politics, influenced by science and the clash of public values, will still decide how much pollution is acceptable. Spending for environmental protection will likely have to be increased. Existing regulatory programs should be built upon and supplemented by market incentives, not scrapped.

No doubt the political parties and interest groups represented in the Project 88 effort will continue to do battle on a wide spectrum of environmental issues. We will always fight over how serious particular environmental problems are, how much environmental preservation we want and what we as a society are willing to pay for that preservation. But the key lesson of this report is that all of us have a common interest in finding methods for dealing with environmental problems that are cost-effective, bipartisan and relatively uncontroversial to implement.

If we learn that lesson well, perhaps we can make enough progress on the major environmental problems we confront that within a few years, the environment will again be relegated to the back pages and to Saturday morning television shows. If so, all of us, environmentalists especially, will have reason to applaud.

*Thomas J. Graff is a senior attorney with the Environmental Defense Fund.*

reporter, Cheryl Clark of the *San Diego Union*, as being critical of the report when it first was published, but within a year, had switched his position and became a strong advocate as general manager of putting that deal together.

Chall: Was their attitude one of not talking to the so-called enemy? Or were they just afraid to consider that idea at all?

Graff: I think they were still of the mind that if they endorsed a program whose merits they probably recognized, they would undercut their own support for what they thought was most important, which was building a peripheral canal. And I think eventually Boronkay more quickly than Kennedy decided it was more important to get the supplemental water that would come from such a program than to promote a canal whose construction I'm sure they both still believe is ultimately going to happen and is necessary, but in the meantime, they better do other things that would shore up southern California's water supply.

Chall: Do you think this is Boronkay's first dip into the idea of the economics of water marketing, or whatever you termed it at that time?

Graff: Oh, absolutely, I think so. You never know what goes on behind closed doors in the camp of other entities. But in public, that was for sure his first foray in that direction. And I think it took him a while. I think he got out ahead of his board of directors from time to time down there, and he sort of brought them along slowly. He also brought into the MWD, in part because of his economic background, Tim Quinn, who has since become a major player in promoting economic approaches at MWD.

#### Working with the State Legislature on Water Legislation

Chall: In your work dealing with the Peripheral Canal and the Ayala bills, did you begin to do actual lobbying, which you might not have done before?

Graff: Yes. EDF's tax status is such that, particularly in that period-- I can't remember when the tax reform act of some year changed the rules slightly--we were restricted to occasional lobbying except when invited to testify. Later on, it changed to where there was and is a specific dollar limitation on how much, either on a percentage basis or on a dollar basis, EDF could spend on lobbying. The fact of the matter is throughout the years, we have done very little, if any, of the sort of traditional, what people

traditionally view as lobbying, which is going door to door among assemblymen and senators or congressmen and senators, seeking votes.

What we have done is we've worked with key legislators and their aides in designing bills, sometimes helping to write them even, and then in working on sort of an overall strategy in promoting legislation or sometimes in opposing it. So it's lobbying of a different kind, and it tends not to be a lot of actual walking the halls of the Congress or the state legislature. And it's been a major part of our activities, very little of it done in Sacramento or Washington, actually, but a lot of it done on the phone.

Chall: As we get into the water issues here with Miller-Bradley, so much of what you were doing seems to have had to do with transfers or water marketing. I just wondered, on the state level, whether you had worked along with Richard Katz, who seemed to have had quite a number of transfer bills over the years, or with Phil Isenberg, and some of the others at the state level on these issues?

Graff: Yes, it's interesting. This goes back a few years. I don't know where the impetus from Katz's original water transfer bill came from, but my recollection--and that goes way back, like 1980--that we were not involved in it. It just sort of happened, from our point of view. But obviously, as the years went on, we worked closely with Richard and with Phil Isenberg, and with [William] Filante on the Republican side, and others, to design improvements in the state water transfer legislation. And we worked particularly closely with Isenberg on the Mono Lake legislation of 1989, worked with Isenberg on the Los Banos Grandes bill I think of '86.

So yes, we did--as our agenda and Katz's sort of became obvious to one another, we started to work very closely. And during the time of the Miller-Bradley bill, we were trying to pass comparable state legislation, unsuccessfully, as it turned out. But I was just going through some of my old calendars, trying to figure out where I was at various times and dates in the '89-'90-'91 period, and there were a lot of meetings having to do with the Katz state water transfer legislation.



## Contacts with the Agriculture/Water Community

Chall: What about your relationship with the growers, let's say the water contractors, [Jason] Peltier and David Schuster? Some of these folks were writing bills also.

Graff: Yes. I also found--I remember a couple of meetings, and as I looked in my calendar, it confused me a little bit, because they seemed to be not quite when and where I remembered them. But I recall at least two meetings, and I'm not sure who all was at each of them, one with Schuster and [Stuart] Somach, and one involving Peltier and I'm not sure who else. I think maybe Schuster as well. According to my calendar, one was late in '90 and one was early in '91, May of '91, where we discussed what was then their legislation to address from their point of view the fish and wildlife problem of the CVP [Central Valley Project].

Senator [Pete] Wilson had introduced in the '89-'90 Congress a bill that was designed essentially to enact into legislation the recommendations of a task force that had been put together to look at some of the environmental problems, fish and wildlife problems, of the Sacramento River. That bill had not gotten very far--it didn't get anywhere, I guess. It was opposed by environmentalists just on its own merits, in terms of what was going on in the Sacramento River, for failing to address the key question of how much water was needed for the environmental resources of the Sacramento River. It primarily dealt with some of the physical and structural problems of Sacramento River fisheries, such as the Glenn Colusa diversion dam and the need perceived by the water and power users and some fisheries people for a temperature control device at Shasta Dam, and so on.

That Wilson bill, though, was pending in the '89-'90 Congress. I should know the numbers of those Congresses. But it never got significant support from the larger environmental organizations--EDF, NRDC, even Sierra Club. It had support from some of the local fisheries interests who had been involved in the design of the Sacramento program, and whose point of view was that the measures in that bill were useful, albeit not complete as a package of needed reforms. But since various Republicans, Senator Wilson, some of the local congressmen up there, were supporting it, they were supporting it as well. So it had some environmental support.

By the May meeting in '91, which is sort of jumping forward a bit, that I had with Peltier, I think it was--at least my calendar shows me meeting with Peltier in May of '91--he and, I know, Schuster and Somach had put together a revised version of the

prior Wilson bill and were hoping to get broader environmental support for the measures in that bill.

Chall: By that time, [John] Seymour had already been appointed to the Senate [January 1991].

Graff: Seymour didn't introduce that bill. The so-called Somach-Schuster draft, of which there were many versions, I think, in the first eight, nine, ten months of '91, were kicking around, but it was never introduced as a formal bill until the very fateful day of November 21, 1991.

Chall: Yes. But even now you're talking about sort of a fish bill, then, in a sense.

Graff: Yes, the [water] contractor's fish bill.

Chall: Left over from the Wilson--

Graff: Right, and it was mainly Sacramento River. In fact, exclusively Sacramento River focused.

Chall: Now we can get into Miller's fish and wildlife bill.

Graff: Okay. Well, let's go back--before we jump into that--

Chall: Why don't you go wherever you want to go?

Graff: What I have here are articles starting in 1981, during the Peripheral Canal campaign in '82--wait a minute, I guess just after. I guess one of these is just after the Peripheral Canal referendum was defeated, then a couple dealing with the MWD-IID [Metropolitan Water District-Imperial Irrigation District] proposal of EDF, some dealing with kind of unusual bedfellows, including James Watt, with whom we had a brief apparent flirtation, and then moving up into the mid-eighties, moving towards our EDF's third wave activities. I guess all this stuff gets us to 1988 and Project '88. I guess I'm missing one of the Project '88 pieces. Eighty-nine, here we are. Let's get to the 1990s.<sup>1</sup>

By the way, I don't know if you want this, but these are copies of press articles I dug out.

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<sup>1</sup>All papers obtained from Mr. Graff during the course of this interview will be deposited in the Water Resources Center Library archives on the Berkeley campus; a few will appear in the appendices of this volume.

Chall: Oh, this is excellent for my research and for the archives as well.

Graff: These are some EDF personal profiles. I didn't know if you wanted those, but there they go, and these are some articles that we wrote--I wrote or Zach Willey and I together wrote.

Chall: Oh, that's fine, yes. Now, that's the *Columbia Journal*, you're holding--

Graff: This is a piece by Zach and myself on federal water policy reform in the *Columbia Journal*.<sup>1</sup>

Chall: You'll want this back.

Graff: I actually have it in paper form, if you'd rather have it that way.

Chall: I think I'd rather have it in paper.

Graff: Okay, so I'll get you a copy of that.

Anyway, yes, so let's go to '89-90, or maybe we should first go back to '86.

Chall: Yes.

#### Drafting the Coordinated Operation Agreement Legislation, 1986

Graff: In '86, we worked with--there was something called the Committee for Water Policy Consensus, which was headed by Sunne McPeak in northern California. During that time period also, I think it was 1985, maybe it was early '86, the Reagan and Deukmejian administrations, and in particular David Houston, the regional director of the bureau [Bureau of Reclamation], and David Kennedy, the director of water resources, had negotiated a formal Coordinated Operation Agreement between the federal and state projects. There was a general recognition that in order for the federal government to sign that agreement, it had to be ratified by Congress.

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<sup>1</sup>Zach Willey and Tom Graff. "Federal Water Policy in the United States--An Agenda for Economic and Environmental Reform," *Columbia Journal of Environmental Law* Vol. 13, No. 2, 1988, pp. 325-356.

So we spent a good part of 1986, or maybe it was late '85, early '86, putting together the so-called COA bill. And it was interesting--it was the one time, and I saw this stated in a recent interview by Governor Wilson, where he, while he was senator, and Congressman [George] Miller, had actually worked together to put a piece of water legislation together. Wilson had introduced a so-called clean bill, which merely said that the federal government shall ratify the agreement, period. But Miller insisted on protections for the Bay-Delta Estuary as part of the package to authorize the COA's signature. I worked sort of intensively to help on that, and negotiated with Schuster and Somach, among others, particularly those two, representing the contractor community.

Eventually, of course, Dan Beard and John Lawrence and Steve Lanich and Charlene Dougherty were all part of Miller's team, and we eventually put together a bill that had very broad-based support: northern California, southern California, federal, state. The only person, I think, who really ended up not liking the bill was David Houston, because I think he perceived it, and probably rightly, as having taken away some of the benefits to the federal project that he saw in the agreement as drafted--taken away in order to pass the bill.

Kennedy, I always thought, although he was nominally not active in the negotiations, had seen further ahead than Houston, and had given up things in the negotiation that he rightly concluded Miller would eventually take back on behalf of the environment. What the state really wanted out of that agreement was access to federal water, to help expand the use of water within the State Water Project. What they gave up was use of the state aqueduct for conveyance of federal water. And also, the agreement on how much each of the projects would, on a percentage basis, give up to meet Bay-Delta standards. And I think he thought he'd, and probably rightly, come out with the better of the deal, when all was said and done.

Anyway, the business community became active in that struggle, and we, with a united front of environmentalists, urbans, agricultural interests, and business people, went back to Washington and persuaded what were some skeptical people in the Senate that the compromise that had been put together in the House and agreed to by Miller and the Valley Democrats--at that time, [Tony] Coelho was still in office as the leader of the Central Valley delegation--should essentially simply be ratified and approved in the Senate. And Wilson and [Alan] Cranston both worked on that, although my perception always was that Wilson, although he endorsed it, never really appreciated why there had to be all this additional assurance of protection for the Bay-Delta



as part of the deal. He would have been happy, I think, with what was essentially the contractors' version of the bill.

It was only later, in '89, that we worked closely with Otto Bos in particular, and John Amodio, who by then was working with Wilson's election [gubernatorial] campaign, in getting Wilson to take a very strong pro-Mono Lake position on a piece of state legislation that Isenberg and Bill Baker had put together, and with then-Senator Wilson's active support, managed to get Governor Deukmejian to sign this bill, which Kennedy in the back rooms actively tried to defeat.

In fact, as I was going through my calendars in preparation for this interview, I saw a meeting I had with Otto Bos in May of 1991, roughly a week or two before he died. I continue to believe that Wilson's general lack of leadership in the water field during the last three years, in fact leadership on behalf of one interest, Central Valley agribusiness, might not have occurred had Bos still been there to give him contrary advice. Bos generally was sort of looked upon to build broad coalitions and consensus on major matters. I think he would not have counseled Wilson to be as intransigent during the course of the Miller-Bradley bill in '91-'92 as Wilson turned out to be.

But in '89 and '90, essentially, Wilson did the same thing in that Congress as he had done with the COA bill originally, which is to introduce a bill promoted largely by the water interests, and to have little or no direct contact with the environmental community, which had a very different view of what should be done than what was in either of his bills.

Now, in '86, when Miller and Coelho and others on the inside and the interest groups on the outside put together a broad coalition for the COA bill, he [Wilson] went along, and in fact took credit for having supported a broad-based compromise, and continues to take credit to this day. But in '89-'90 he, as far as I know, never reached out to the environmental community to see what its critiques of his approach were, and yet, he continued in the campaign in particular to promote that he had an environmental bill that was going nowhere and in part blamed the Democrats for that.

Background on the Miller-Bradley Bill

Senator Bill Bradley's Interest in California Water Issues,  
1989

Graff: Also in '89-'90, [Bill] Bradley--well, let me go backwards. Bradley succeeded to the chair of the Subcommittee on Water and Power in the Senate Committee on Energy and Natural Resources in '89, and I think quite consciously decided that he was going to make an imprint on western water from that vantage point. One of his first acts was to remove the person who had been the chief aide for water in the Senate, a fellow by the name of Russ Brown, and to bring in somebody new who would be an activist on behalf of water policy reform in the Senate. He hired Tom Jensen, who came to him from the--I can't remember the proper name of it--but the Northwest fisheries commission up there, who had been active on water policy reform and Indian reform issues in the Northwest.

Bradley also, I think, made the calculation that he was going to use the '89-'90 period to educate himself on California water, and that he would promote reform on a limited basis, mainly on the acreage limitation issue, the rec [reclamation] reform issues. In other states, in particular Nevada, he tackled the northern Nevada controversy over Pyramid Lake and the Stillwater National Wildlife Refuge, and the water supplies for the Reno-Sparks urban area, and the Newlands Project, the oldest of the federal reclamation projects in the West, all of which are entwined in a very complex struggle involving several different kinds of environmental resources as well as two different Indian tribes and urban and agricultural interests. This entire complex of problems, from my perspective, and I think that of David Yardas, my sidekick, whom I'm sure you're going to meet shortly, was in many ways a dry run for Bradley. It was sort of an experience gatherer in a much smaller scale of what would eventually take place in the 102nd Congress in California.

Chall: Why would he be interested in California or the western water issues? He did come into a subcommittee that certainly could have used his interest, but he could have just done nothing.

Graff: Well, there are a couple of questions I don't have the immediate answer to. One is, why did he end up with that subcommittee? Did he ask for it, or was it given to him? I don't know the answer to that. I also don't really know what--no one knows the motivations of other people--what is fact, or maybe it's opinion, but it's pretty well formed opinion, is that he hired a very strong, aggressive, and competent person who had reform tendencies in the

person of Jensen, and essentially eased out a person who had very different tendencies in the person of Russ Brown. Russ Brown had had a long history with that committee, had originally been in the majority doing the same work for Scoop [Henry] Jackson when Jackson was chair of the committee. Then, when the Republicans took over the Senate in the early eighties, he comfortably moved over to staff the Republican side of the committee, and then eventually moved right back to staff the Democratic side. I mean, he was basically nonpartisan, pro-water development.

And Bradley told [Bennett] Johnston, who was the chair of the full committee, by 1989, that he wanted his own person. Now, Jensen always saw himself as serving two masters: Bradley as subcommittee chair and Johnston as committee chair, which is sometimes not a particularly easy thing to do, because the two were not necessarily of one mind. But at some point, I would like to talk about Johnston--

Chall: Yes, we need to.

Graff: Johnston, of course, eventually became a key supporter of our point of view. I did look, and I saw in my notes several meetings in 1989 in the summer and fall with Bennett Johnston, Jr. He was a staff person at the time at TPL, Trust for Public Land, and became active with Zach and me in our efforts to put together water deals for Mono Lake. I mean, our idea, we had worked with a group, sort of a consensus group that had been formed under the auspices of UCLA extension, a fellow named Leroy Graymer, which included the city of L.A., the Department of Water and Power, the Mono Lake Committee and other environmentalists, the Forest Service, which had an interest up in the basin, and the--

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Graff: I was telling you about the Mono Lake group. We were looking at the idea of finding replacement water, and our focus was on water marketing. We had found some water districts and growers in the northern San Joaquin Valley who might be interested in selling water to Los Angeles, and the lake, indirectly. EDF had not had real acquisition expertise, and so we went looking to the environmental groups who had land acquisition expertise--The Nature Conservancy, with whom David Yards was working closely in Nevada, and TPL. Bennett Johnston, Jr., was the staff person from TPL who was excited about this prospect and excited about bringing TPL into the water acquisition business, sort of comparable to its land acquisition business.

So that personal relationship that had built up with Bennett, Jr., eventually probably was helpful in kind of subtle ways in

having access to the staff of his father, and sort of communicating what the environmental perspectives were, as Bennett Johnston, Sr., entered the water picture in late '91 and early '92.

Anyway, Jensen saw himself as serving both Bradley and Johnston. Now, Bradley had a major hearing in, I guess it was August of '89, in Sacramento, where he invited all the California water interests to testify.

Chall: Are you sure that's--you're probably right. I have a date of September '91, but I could be wrong. He might have been here earlier.

Graff: Yes. It was August 29, '89.

Chall: Okay. So that was an earlier hearing than I know about.

Graff: Oh, yes. And this had all the water interests. It was all day. Vic Fazio came and sat by Bradley's side. And it was basically a fact-finding hearing, just generally what are the various positions of the water interests. I think it was that hearing, I can't vouch for this, where he got into kind of an argument with Boronkay. Boronkay came in, and I don't know if this was conscious or unconscious, but he said, "California is growing by the equivalent of a St. Louis every year." I don't know if he knew that Bradley was from St. Louis originally, and--[laughs] But Bradley bristled, as I recall, and asked Boronkay whether Boronkay--didn't he have some responsibility to limit that growth, if he couldn't see the water supplies necessary to meet that growth. And Boronkay in turn bristled back, and their relationship always was one that had a fairly high level of tension.

But I have also in my calendar about a month before that, on the 31st of July, Jensen had come out here to California and had a meeting with the environmentalists. In fact, it was at a restaurant near here, the upstairs room at Yoshi's, where he laid out what Bradley's schedule was going to be, basically that he was not going to be ready to address major environmental legislation in California in '89-'90, but was going to do it in time in the following Congress.

Chall: What went on at the August 29 meeting?

Graff: Basically it was a hearing. It was a big, open hearing. It was a fact-finding hearing. What are the problems in California water? All the major interests were represented by one or more persons.



Chall: And that was where?

Graff: It was in Sacramento, it was in the Resources Building auditorium.

Chall: Department of Water Resources?

Congressman George Miller's Fish and Wildlife Bills, 1989,  
1990, 1991

Graff: Well, Resources Agency. The ground floor of the big Resources Building. But Miller's staff had been coming out to California on a periodic basis from the mid-eighties on, to interview environmental groups. I remember having a couple of funny encounters with these folks, some of whom are good friends. I was always skeptical that Miller could move fish and wildlife legislation, because basically the Valley people would be opposed. Whereas he was always quite effective in opposing bad things from the time even when he was a junior congressman in the mid-seventies, '77, when passing affirmative legislation was hard.

But, given the lineup of the interests, given who were senators, given that the agribusiness interests are not shy about throwing their money around, the fact that the staff would come around on a periodic basis and say, "What is your wish list, your dream of fish and wildlife legislation" never struck us as particularly a promising approach. And of course, for many years, they didn't even introduce legislation.

Finally in '89, Miller for the first time introduced a serious piece of proposed fish and wildlife legislation, which to be honest, we at EDF didn't take very seriously, for the reasons I just described. And also, because by the summer of '89, it became evident to us that Bradley, who was a necessary collaborator in making this happen, was not ready and wasn't going to engage in California until '91.

Nevertheless, to our surprise, Miller worked out compromise legislation with the Valley Democrats in, I guess it was the summer of '90. We had significant problems with that legislation.

Editor's Note: To my inquiries about how Miller's California Fish and Wildlife Bill of 1990 (H.R. 4700), introduced May, 1990, could become H.R. 3613, the bill introduced by Douglas Bosco November 8, 1989, which contained no language on contracts, Mr. Graff sent an explanation and a packet of the bills and memos.

(1) H.R. 3616 (?) (Bosco, 101st Congress, 1st session), the "Upper Sacramento River Fishery Resources Restoration Act" (with as TG notation indicating that "this is an extra copy of Bosco's Sacr R. bill", and a hand-scribbled "HR 3616" below the sponsor line);

(2) H.R. 4700 (Miller, 101st Congress, 2nd session), the "California Fish and Wildlife Protection Act of 1990" (as introduced);

(3) H.R. 3613, the "California Fish and Wildlife Protection Act of 1990" as reported by the Full Interior Committee" on July 25, 1990 (which includes as Title I an "Upper Sacramento River Fishery Resources Restoration Program");

(4) our 7/24/90 letter supporting what emerged from committee the very next day as item (3); and

(5) my memo of 8/2/90, which looks like a pre-cursor to "Yardas-Garrison."

In sum, it looks to me like (3) is the melding of (1) and (2), together with the new/renewed contracting provisions (sections 406, 409) that combined to cause us concern (as reflected in (5)). Item (4) supports this reconstruction -- as I recall, a major debate was whether to proceed with (1) alone, or to combine (1) with the more comprehensive reforms in (2). Our 7/24 letter argues against a "piecemeal" approach in favor of a "comprehensive" approach, whatever the final details.

I hope this helps.

P.S. See also the "June 26" (must have been July 26) memo from Charlene Dougherty (Miller's staff, copy also enclosed), which notes that "we amended a major portion of H.R. 4700 into H.R. 3613."



June 26, 1990

MEMORANDUM

TO: Supporters of H.R. 4700

FROM: Charlene Dougherty

SUBJECT: Markup of legislation

The Subcommittee on Water, Power and Offshore Energy Resources reported H.R. 3613 today as amended. A copy of the amendment in the nature of a substitute is attached.

You will see that we amended a major portion of H.R. 4700 into H.R. 3613.

You will also see that portions of H.R. 4700 have been changed. The explanation of the amendment highlights a few of those changes. Changes have been made in the limitations section of the bill as well.

During the markup, Congressman Miller made a commitment to continue to work with Congressman Lehman on the legislation. He also invited all other interested parties to work with the subcommittee between now and full committee markup on their concerns -- an invitation that obviously includes you.

It is our goal to put together a bill that can pass the House and take that bill to the floor this session.

All of your work on behalf of California's fish and wildlife is making a big difference. We are as far along as we are today because of your support and your ability to let Members of Congress and the public know how severe fish and wildlife problems are. We still have a number of hurdles to cross before enactment and we need to keep pushing as hard as we can.

Call me if you have questions and comments.

Thanks again for your help and support.

Chall: Was that California Fish and Wildlife Protection Act of 1990?<sup>1</sup>

The Natural Resources Defense Council and California Water Issues

Graff: Right. And it was interesting. I've sometimes given talks, particularly to environmental audiences, where I talk about one of the historic water rights settlements of the western world, from my point of view, that occurred in September of 1990, when EDF and NRDC reached a settlement. [laughs]

Chall: You otherwise weren't on the same--?

Graff: That's correct. We had been doing basically different things, not necessarily in contradiction to one another, but certainly very different. We had been in the water game, as I have described, since 1971. They had left water alone from the time they opened their offices a few months after we opened ours out here, pretty much left it alone--they had been involved in one case--until maybe the early eighties. I can recall a meeting where they came to our office and said they were going to start a water program, which struck us as somewhat odd at the time, since we had sort of divvied up turf. They were involved in forestry, which we had never done, and they were sort of invading our turf, but we decided we weren't going to claim an exclusive franchise, which we probably couldn't have succeeded in defending anyway.

And they ended up, we sort of ceded to them an area that we had worked on for a number of years and had been quite unsuccessful in promoting, which was trying to get the Bureau of Reclamation to price its water at something closer to the actual value, or marginal cost, or however you want to describe it, because they had resisted and we were getting nowhere. So we figured if there's a wall you can bat your head against rather than us, go ahead and be our guest.

So they had come in and had done some serious work in the early and mid-eighties on the subsidies in the Bureau of Reclamation's program, both in California and West-wide, and had developed a quite active water presence based largely on that set of issues. We also worked with them collaboratively on drainage

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<sup>1</sup>H.R. 3613, The California Fish and Wildlife Protection Act of 1990, as reported by the full Interior Committee, July 25, 1990.

issues, which is another big federal issue. But that was their big issue. They also worked on reclamation reform. Basically the financial issues around the bureau program became their major concern.

They were unhappy with the lack of interest that Miller displayed in the summer of '90 in his fish and wildlife bill with what had by then emerged as their big set of issues, which were contract renewals. They had filed a major lawsuit, which was by then before Judge [Larry] Karlton in Sacramento, and they had gotten an injunction against the signing of renewal contracts in the CVP, or at least a threatened injunction. I don't know exactly what the sequence was. But they, for their own reasons, were unhappy with this bill.

They had always been somewhat uncomfortable with our water marketing approach, which essentially said, "We'll concede that water's being sold too cheap to the growers of the Valley, but to make water use in the state more efficient and to avoid incremental environmental damage from building new projects, such as the Peripheral Canal or Auburn Dam or whatever, we're going to encourage water transfers." Their attitude was no, the way to do this was to raise the price of water, encourage conservation through a more direct sort of antagonistic approach, and had worked hard to do that.

#### The NRDC and EDF Join Forces on Fish and Wildlife Protection, Water Transfers, and Contract Renewals

Graff: We came together with them both equally unhappy or both unhappy with Miller's approach, and wrote a memorandum to Charlene Dougherty of Miller's staff, who had been for a while the main proponent of the fish and wildlife bill, laying out our proposals collectively for how both the pricing issues and the transfer issues and the fish and wildlife issues could be rolled into one package. I think Jensen has said later--in meetings I've been with him recently--that that joint EDF-NRDC package, written in September of '90, essentially became the guts of the Bradley bill in early '91.<sup>1</sup>

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<sup>1</sup>For more details on this letter, see pages 38, 47-49. Letter is in the Appendix A.

Then another thing I did shortly after that, which I've always been about as proud of as anything I've done in my professional career: Miller had been saying for many years he was going to have a hearing on water, and he had kind of avoided it, for reasons I never quite understood. And then he scheduled a hearing for late October of 1990. This was after it was clear that the fish and wildlife bill [H.R. 3613] was going nowhere. I'm not sure exactly what the sequence was with respect to the reform controversy, which went right up until the very last day of the 1989-'90 Congress, but he scheduled a hearing, asked me to testify, and then about a week before the hearing actually was to take place, canceled it.

Chall: Where was it to take place?

Graff: It was going to be in Washington. What I did, even though I had barely begun writing the testimony, is I went ahead and wrote the testimony anyway, despite the fact that I knew there was not going to be a hearing, although I didn't say that. Then I circulated it to everybody, a draft piece of testimony for a hearing that by then I already knew was not to take place. So it was kind of a nice opportunity to get out our point of view on what should be in federal water policy reform legislation, when no one else was testifying on anything different or contrary.

Chall: And yours was mainly--

Graff: I basically laid out, what I think became, again, the basis for the '91-'92 piece of legislation.

Chall: Transfers--

Graff: The basic idea was, the way you bring the urban interests in was transfers, which Miller always had been uncomfortable with. His philosophy was that you do what NRDC wanted, which is you increase the price of water and power, require mandatory conservation programs, and bar or limit contract renewals until environmental problems had been addressed. But from our point of view, you could use price increases to fund necessary environmental measures--that way, you also weren't just going to take the money from taxpayers around the country to solve the problems. What you give the water users, which made NRDC uncomfortable, but which we perceived as absolutely necessary to make water transfers work, was the certainty of contract renewal. That you would say to them, "Okay, the deal is you get to renew your contracts, but at a somewhat higher price, and you have to be willing to allow the resale of the water we're going to give to you. This is actually

a good deal for you." The urban and business interests would buy into that. And then, of course, you had to have fish and wildlife protection.

So I think that was the sort of broad outlines of what eventually became Miller-Bradley.

#### The Contract Renewal Issue: Congressman Miller's Dilemma re Transfers

Chall: George Miller's bills in 1990 and 1991 do have water contract limitations. [reading from Section 406, H.R. 3613, July 25, 1990] "Prohibits the Secretary from entering into new water supply contracts until one year after the commission submits its report to Congress. Prohibits the Secretary from renewing water supply contracts longer than three years until the requirements of this Act are met and the State Water Resources Control Board has established new water quality standards for the San Francisco Bay and Delta."

Graff: Miller was working with NRDC I think more than with us, and his basic idea was pursuing the idea in their lawsuit; you can't renew your contracts until you've taken care of the environment. I mean, that was the basic idea. But see, what happened was Miller then cut a deal with the ag interests, where he didn't follow through on this point--he limited contract renewals, but he didn't really prevent new contracts. Miller has this tendency--I guess somebody's going to eventually hear this, so we might as well lay it all out. He, I think, realizing the realities of politics in the House and in the nation, would eventually work out compromises, deals, with the Central Valley delegation that didn't live up to the promise of the bills he introduced. And I'm sure from his point of view, that is the only way you get legislation moving. In this case, we were not paying major attention because it was evident to us throughout that that legislation as a whole was not going to pass Congress, because Bradley wasn't ready to engage.

But he cut the deal I mentioned that both EDF and NRDC were quite unhappy with in the summer of '90, which undercut some of these good provisions that he had in his original legislation. Something not that dissimilar happened in May of 1992, which I'm jumping ahead to.



Chall: Well, I suppose he's trying to be--Miller has to be realistic.

Graff: Yes, but so were we. My view, and I've never really sat down kind of after the fact with Congressman Miller or with John Lawrence, Dan Beard, and others then on his staff, but I think some of the things that ended up in the Miller-Bradley bill were quite unpalatable to Miller, and they were different things than what were unpalatable to various environmentalists in prior versions of compromises that he put together. And we did our best during the course of the two years that Miller-Bradley--when various versions, various authors' bills were prevalent--to lay out for Miller what we thought was the structure of a bill that would work. Most notably, that it had to include a major water marketing component that Miller himself I think has never been comfortable with.

Miller's main idea, I think, was that these guys in the Central Valley were ripping off the taxpayer and ripping off the public, and the crucial part of the water marketing idea was they were going to get a second way of doing that. Not only could they get cheap water to grow crops, in many cases with big landholdings that were beyond the original intent of the acreage limitation, but they were going to get to resell that water at a profit.

#### Senator Bradley Takes the Lead on the CVPIA, 1991-1992

Graff: So I wrote some memos, which I'll give you, including one as early as February of '92. This is again jumping forward, but what really happened in '91 was Bradley introduced his bill [S. 484, February 26] early, before Miller did, [H.R. 1306, March 6] and then there were three hearings through 1991, all on the Bradley bill in the Senate. One in Los Angeles, one in Sacramento, one in Washington. And then work began on mark-up, informal mark-up, of the Bradley bill in the fall of '91. During all that time, Miller was holding back. I think Miller correctly perceived, based on his experience in '90 and going all the way back to the rec reform bill of '82, that the big problem was the Senate--getting a bill through the Senate, given the rules of the Senate and the ability of one senator often to kill legislation all by himself. I think Miller rightly perceived that the key was to get a bill out of the Senate. So he encouraged Bradley to take the lead in trying to get something through, get something out.



There were other complications. Johnston's big priority in 1991-'92 was an energy bill, and eventually Johnston and Miller were going to have to negotiate an energy bill, and Johnston's major interests in an energy bill were the oil companies and the nuclear power industry, which were not exactly Miller's closest political allies. [laughs] And I think Miller perceived that somewhere along the line, if he was going to get the water bill he wanted, he was going to have to give Johnston some of the energy things that Johnston wanted. Miller always thought if he had Bradley taking the lead on the water bill, maybe he wouldn't have to give so much up on the energy side to get what he wanted on the water side.

The forum for discussions among the interest groups and really for legislative action for all of '91 and well into '92 was the Senate, with the Bradley bill, all the Bradley hearings, with Bradley calling negotiations in the late fall of '91, then Johnston jumping into the fray in early '92 with his hearing and then with his Johnston mark. It really wasn't until April, May, after the Senate had acted, that Miller actively entered the fray, although obviously they were paying attention.

But in February of '92, I wrote a memo to Beard and Lawrence, after meeting with both of them separately, and realizing that the sort of vision that we had, and we thought Bradley had, for solving the problem, for getting broad based enough support to pass a bill, was not what Miller would naturally gravitate towards, because it included water marketing, because it included contract renewals, and basically major concessions from his point of view to the ag interests who had been his major adversaries for his whole congressional career.

Chall: The ag interests certainly didn't approve of your contract renewal proposals, even though you had them in there. You shortened--

Graff: Well, we shortened them, yes. They had to give some ground, that's true. But basically our view was, you could fashion a solution that would accommodate all the interests, and that's in fact what I think the bill did. Now, I also thought, and again, patting myself on the back, correctly, that ultimately it would be very difficult for the ag interests to openly support any bill. I can still recall a conversation I had in the hall outside the Senate committee room, with Somach, when we went back there for our negotiations in November of '91, where I said to him, "You know, ultimately, if we get a bill here, it's going to be a bill that you're not going to support, but it's going to have a lot that you're going to want in it."

And that's the way it ultimately turned out, although [Vic] Fazio, who played a critical role in the late going I think did in fact get a lot of what he wanted in the final bill. Lou Cannon, who I thought wrote the most perceptive analysis of the whole thing at the end concluded--he had been around a long time and he's not exactly a radical--

Chall: Did he write it for the *Washington Post*?

Graff: Well, he's got a syndicated column. He wrote it as a syndicated column. His observation was that the ag interests got a whole lot, and didn't realize what they got, or if they did, they were clever enough to conceal it.

Chall: Well, they haven't liked it very well, I guess.

Graff: I don't know. They've sort of come to live with it, is my theory. I view it as a pretty successful enterprise all around.

Anyway, we've jumped ahead.

David Yardas: Personal Background and Career Path with the Environmental Defense Fund

Chall: Were we going to have David Yardas here today?

Graff: Yes. One of the reasons why I think it is particularly useful to have him is that he was heavily engaged with Jensen personally and with Bradley in the Nevada bill negotiations in '89-'90, and I think that background and what I think came to be a very high level of confidence that Jensen particularly placed in Yardas made it possible for EDF, for Yardas himself, and for EDF and me to become, I think, very--I don't know, influential, with particularly the Bradley side of the struggle in '91 and '92. So I think it's useful to have David's insights on how his relationship with Jensen and Bradley's office developed.

I don't know what level of detail you're going to want to go into in future parts of this discussion, this interview, but David was essentially the technical focal point of the environmental community for purposes of negotiating all kinds of things, all the various versions of the Bradley bill and the Johnston mark. There were Senate negotiations that ended up aborting before they passed the Seymour bill in March or April of '92.

Actually Yardas and Barry Nelson were our two people on the ground in Washington for the most part in September of '92, when the final bill was put together. David was calling me--I was sitting here, he was there--and asking what did I think of this proposal or that proposal or this compromise or that deal or whatever.

So he was there, even more so than Barry, who I think was most responsible for the political element. David was the sort of nuts-and-bolts part of it. So I think he could be helpful in giving you some of that element.

Chall: I think it would be useful to get into some of the technical ends, the changes. For example, in retracing this process--the Katz bills, your and Willey's reports, and so on. It appears that the debate on water marketing has been going on for a very, very long time. But there are some really serious problems involved in water marketing. And problems that make a layman like me wonder about them, and also, I'm sure, the rest of you to some extent. So the question that I have is in what ways did water marketing come into the bills?

Graff: I think David would be helpful there, too. I can give you sort of the grand descriptions. Bradley had a set of water marketing provisions in his original bill. And David has a complete file of bills--from A to Z--with all kinds of notations and so on.

Chall: I think I have Bradley's original bill.

Graff: I can't remember the number--484, wasn't it?

Chall: Yes.

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[David Yardas joins the interview]

Chall: I wanted to know something about your background which brought you to EDF, and when.

Yardas: Well, let's see. My undergraduate work was in the area of economics from the University of California at Davis, ironically, at that time, focusing on international relations issues rather than environmental issues. I went back to Washington, D.C., to pursue that as a career, and for a variety of reasons, started doing environmental work instead--friends that I had, the realities of an eight-hour work day and so on, and feeling like I

needed to be more stimulated by what I was doing. Environmental stuff had always been a passion but not a vocation.

So I started looking for other work, and obtained a slot as a research assistant at a place called Resources for the Future, which is a kind of a think tank, a natural resources policy think tank back in D.C. Spent a couple of years there, and decided that I ought to go back to graduate school to fill out some of the gaps on the environmental policy end that I didn't catch as an undergrad since I wasn't really focused on them, and came back to Berkeley and did graduate work at the Energy and Resources Group at Cal. That's an interdisciplinary graduate group, and my emphasis was on surface water hydrology. So that was my main area of interest.

Chall: With whom did you work on that?

Yardas: Somewhat independently. My major professor was John Harte, and actually--this will get to answering the question--but I guess the main person I worked with there was Ed Kahn, who is a scientist up at the Lawrence Berkeley Laboratories. He works primarily in the area of electric utilities and public utility regulation. I did a thesis that looked at some electric utility issues as they interfaced with water supply issues. Because of that, I ended up going off on a tangent and worked for a private energy, alternative energy company for several years after I finished graduate work, and in that capacity began to use the ELFIN model, standing for Electric Financial.

ELFIN is a model that was developed and continues to be supported by EDF, and it's for looking at kind of production costs, simulations of utility systems, alternative expansion paths, least-cost planning, things like that. That work, my work with ELFIN, which was in kind of the early days of the real public work with that model, put me in touch with the author of the program here, a fellow by the name of Dan Kirshner. I expressed at various points, I think, as time went on, my frustration with the private sector and what was going on with the firm I was working with--

Chall: What was the name of that firm?

Yardas: At that time, it was called the Independent Power Corporation. It subsequently split into two firms, and it was partly the atmosphere around that split that was frustrating to me. But more to the point, the idea of working for private clients was just not as compelling to me.



Anyway, my work with Dan and with that model, and my background with the water stuff, ended up being kind of a perfect fit when Zach Willey in 1986 received some Ford Foundation support for a new initiative that he called the Rural Economy and Environment Program, REEP. Ultimately Dan Kirshner let me know that there was a possibility that there would be some support for a research analyst or assistant-type position in this program that Zach was launching, and he (Dan) was also looking for some part-time support on the ELFIN work. So I eventually came to EDF in about early '86, split half and half between the energy and REEP or water programs, and actually began work on the Pyramid Lake, Nevada, controversy in 1986, as sort of one of the first cases that we looked at under that new initiative.

#### The Pyramid Lake Project: Its Relevance to the CVPIA Legislation

Chall: Do you want to explain that Pyramid Lake project, what it was you did and what you learned?

Yardas: Yes, boy!

Chall: Because I understand that it carries through--

Yardas: Yes. Well, let's see. I guess in a nutshell--it's hard, because I'm still hopelessly enmeshed in that puzzle, it's hard to sort of do it in a nutshell.

Chall: Well, make it a broad nutshell.

Yardas: Yes. There's a couple of themes that are sort of really relevant, I think, to the CVPIA context. One that is in my view extremely important and a theme that I think underlies a lot of what happened has to do with personal relationships. My work on Nevada just, I think, fortuitously happened to come about at a time when Senator [Harry] Reid, then a newly elected senator from Nevada, wanted to try and do something with the water issues in the Reno-Sparks area. Senator Reid, a Democrat of Nevada. I guess he came in in 1987; that is when he first became a senator. I think that's right. I can check that for you.

In fact, I'm now involved in a structured, facilitated negotiation up there that commenced a couple of weeks ago, and he came and gave kind of the opening keynote or whatever, and one of

the stories he told was how on election night when he was first elected to the Senate, he was asked what his top priority was. He said, "The water problems in western Nevada," or northern Nevada, to him. He went on to clarify this time that that hasn't changed, except that now it includes southern Nevada and Las Vegas's problems as well as northern Nevada.

But he had that on his screen; the evolution of litigation in that controversy. Things had kind of ripened, I guess, and we came on the scene with some new ideas about water marketing, about the importance of environmental restoration, things of that sort, pieces that had been missing from the puzzle. Substantively, I think, the main thing I started focusing on was how to get out of what was being characterized as a conflict between two environmental resources, the Pyramid Lake resource and the wetlands of the Lahontan Valley, including the Stillwater National Wildlife Refuge and surrounding wetlands.

Their needs in terms of water were being played off against each other by a federal reclamation project community called the Newlands Project. We came in and basically started using ideas of water marketing and economic incentives and things like that.

Chall: Where were you getting those ideas from?

Yardas: It was really an outgrowth, I think originally, of the MWD-IID conservation investments work, the idea that the urban sector could come in and invest in conservation in an agricultural project and reap the benefits of that conserved water. So it was that same theory. Reno and Sparks as cities could come in, use their money rather than federal money, to go in and buy conserved water in the Newlands Project. In fact, Derby Dam--which diverts water out of the Truckee River over to the project through the Truckee Canal--is Reclamation contract number one. It's the very first contract that the Reclamation Service initiated in 1903. It's the first project in that sense. So it's a very old, very antiquated project.

So it was kind of using the MWD-IID project as a model, based primarily on Zach's work, because I was still pretty new at this point, that kind of pointed us in that direction, and I think really got the debate going about another way of looking at things out there.

Fast-forwarding a bit, at near the same time back in Washington--did you talk at all about Bradley and Jensen?

Graff: Yes.



Yardas: That's one Tom was kind of shopping around for, for sort of some interesting things consistent with their agenda, and the Truckee-Carson was known as a reclamation project, was within the jurisdiction of the energy committee, and very much on the screen as a continuing source of controversy. And when he came out and toured he thought that they could actually do a lot in terms of the new West theme, or the restoration, and urban sector water marketing, and efficiency in agriculture and all that kind of stuff.

So it was really the evolution and timing of that work as it coincided with the Bradley-Jensen axis, I guess, and my work in particular with Tom during that period that created a real relationship. He came to, I guess, trust my work in terms of the analysis I could give him, and the background. He would test stuff off me, send me stuff for reaction, whatever. Started to use me in a way as kind of an adjunct staff person. I don't think I'm the only person he used that way. I think he was really good and able as a congressional staffer in part because he was very good at mobilizing other people to do a lot of work that would feed into him and that he could use to advance his interests.

Chall: This goes back to 1986.

Yardas: Well, that's when I started. I started in '86 with that project. I think things really started moving around '88 or so, and it was 1990, November of 1990, when Public Law 101-618--that's the Truckee-Carson-Pyramid Lake Water Rights Settlement Act--passed Congress.<sup>1</sup> So it was really the '89 and '90 period, two years leading up to the passage of that act, where I would say that that was the heavy activity.

Chall: What in the act in terms of water transfers has been successfully carried through? It's one thing to get them successfully through the Congress, it's another to find that what you had projected is feasible.

Yardas: Yes. Hence the negotiation that I am once again involved in.

Chall: Is it successful?

Yardas: Yes, I think it is successful in the same way that the Central Valley Project Improvement Act is successful, in that it changed

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<sup>1</sup>The Fallon Pointe-Shoshone and Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, P.L. 101-618, 104 Stat. 3289, November 16, 1990.

the nature of the debate and it changed the terms of trade. Now, whether it brought lasting and permanent protection or restoration to the resources that we're most interested in, I can't say that yet. But we're no longer headed in this direction, we're headed in that direction [points in two directions].

The implementation is a huge challenge. I don't think I could stand to be involved in another bill in Congress, because I couldn't stand to be involved in the implementation effort, at least not at the same time. I would have to drop something. But that act, and if you want more background on this, I can give you some writings and literature, and also we have--a map would help, whatever. I didn't really come prepared to do that.

Chall: Did you trade land? Did they buy land in order to get water rights?

Yardas: Yes, there's an active water rights acquisition program going on within the Newlands Project now, which is essentially buying up irrigation land and water rights and moving the associated water from farm use over as an endowment to the wetlands. The idea is to basically shrink the agricultural base. The Newlands Project sits, in a sense, in between Pyramid Lake and the wetlands, the Lahontan Valley wetlands. There's two rivers, the Truckee and the Carson River. Water from the Truckee is diverted over to a storage reservoir on the Carson, and that is fed down to the project.

So if you try and conserve water in the project in order to keep water in the Truckee to benefit Pyramid Lake, which is the terminus of that river system, then that has a potential for impacting the downstream wetlands, wetlands which are downstream of the project and have for many, many years relied on the kind of excess or slop of irrigation as their supply. And what the acquisition program that was authorized under the act tries to do is to shrink the agricultural base and to reallocate a portion of that to the wetlands, to give them a permanent endowment that gets them out of the alleged trade-off between the health of the lake and the health of the wetlands.

### Agriculture, Wetlands, Indian Tribal Fisheries

Chall: And what happened to what's known as third-party interests?

Yardas: They're alive and well, very much a subject of debate, part of the reason for the facilitated negotiations that are currently going on. It is not without impact. I mean, there's a whole number of things that need to be discussed about third-party impacts, including third-party benefits. The benefits of being a beneficiary of the federal reclamation trough for the last eighty years are significant, and that needs to get taken into account somewhere.

But the other important piece of that whole settlement-- there's a number of them. There are several tribal settlements, there's two Indian tribes involved. There are interstate allocations, that's between Nevada and California, because both the Carson and the Truckee are interstate rivers. But perhaps the real linchpin is a water settlement between the Pyramid Lake Indian tribe and the water purveyor in the Reno-Sparks area that will allow for additional drought support for the Reno-Sparks area, and essentially the continued development of that area through a water banking program that also provides substantial benefits to the Pyramid Lake fishery, to the endangered fish that reside in Pyramid Lake.

Chall: Which the Indians use? Are the Indians the fishermen?

Yardas: Well, yes. There's two fish, two primary fish. One is called the endangered cui-ui, and the threatened Lahontan cutthroat trout. The cui-ui are the namesake of the lake and the tribe historically. They are not a commercial fish; they're kind of a slow-moving, long-lived, prehistoric-looking sucker-type of fish, but very much entwined in tribal history and culture. Pyramid Lake was called "Cui-ui Lake" by the Pyramid Lake tribe, which was known as "kuyuidokado," or cui-ui eaters. So that's very much a focus of their kind of culture and subsistence and history and whatever.

Chall: I see. So you had to protect their water rights, too, for fishing.

Yardas: Well, it's not so much their fishing as the habitat of the lake to preserve the fish itself. The fish are not current--they don't fish the cui-ui at this point.

The Lahontan cutthroat trout are of commercial interest potentially, certainly of great recreational interest. The original strain of that species that was indigenous to Pyramid Lake went extinct in about 1940 due to the drop of lake levels resulting--sort of like the Mono Lake situation--resulting from

diversions of water upstream, in this case to the Newlands Project. So one of the long-term interests of the tribe is to sustain what is now a reintroduced population of Lahontan cutthroat trout in the lake for angling and commercial purposes. There's a real economic potential there.

### Becoming Involved in California Water Issues: Drafting the Yardas-Garrison Letter

Chall: I see. So that's the source of some of the work that you've done. And then that brought you into working with Jensen and Bradley on the CVPIA, the early bills. When did you start working with the Congress on what we now call the CVPIA?

Yardas: I started to get out of my energy work and moved over into, kind of became full-time water back, I forget exactly when, maybe '89 or so. And as part of that move, I started to pick up some of the California work, or get more involved. The San Luis Drain issue, I think, was an early piece. And in that capacity, I was starting to get involved in some of the discussions that were going on at that time pretty much informally, I think, although there was a whole separate thing going on with Miller and his fish and wildlife bills. I was more kind of just reading those and reacting to them than having any dialogue with his staff at that point in time.

But I guess the main thing on the Truckee-Carson is that as a consequence of having worked that bill, the relationship with Jensen was key in large part because of the role he played in the CVPIA. But also my work on Truckee-Carson gave me introductions and substantive connection with a lot of people on Capitol Hill, with the same people who would ultimately become involved in the CVPIA, and so I think again the relationship thing was pretty important there.

So I don't know. But I guess the first real substantive--did you talk about the letter with NRDC?

Graff: Yes.

Yardas: So I think the first real substantive entry for me in the start of the CVPIA from my point of view was this joint letter with NRDC.

Chall: Who worked out-- Did the two of you work out the joint letter?

Yardas: It was pretty much all of us, I think. It was signed by myself and Karen [Garrison], but I know that on their side, it was Sammy Yassa, Hal [Hamilton] Candee, and Karen at least. I know here [EDF] that, since it had implications for Kesterson and San Luis Drain and all that, John Krautkraemer, Terry Young, myself, and Tom I think were probably the main people involved. Am I forgetting somebody?

Graff: No, that's right. Later on, as I guess we'll get to, David took a leave of absence in the first half of 1991, and Chelsea Congdon played a role in the CVPIA itself. But I think she was not yet aboard as of September of '90. My recollection of that, and it's a little dim, is that David and Karen really were the ones that were talking to each other in terms of the relations between EDF and NRDC at the time. I remember reviewing the letter, and I'm sure I had some comments, but I view that letter as being primarily their work, yours, David's, and Karen's.

But going back to what I said earlier, I think it did bridge considerable differences between the approaches of the two organizations, and it reflected a combined perception on our parts that Miller had steered in a wrong direction in reaching his compromise with Valley Democrats in that year's version of the fish bill.

Chall: All right.

Yardas: Karen, by the way, also went to the energy and natural resources program at Cal. That's where I first met her.

#### Genesis of the Three-Way Water Agreement Process

Graff: John Krautkraemer, which is hard to spell, he played a big role in the Three-Way negotiations, which we didn't touch on, but at some point we should.<sup>1</sup> It was really our main--I played a role in those as well, but he was pretty much EDF's representative to Three-Way. Three-Way, one thing I noticed also going through my calendar, was that the Hetch Hetchy meeting at which Three-Way was born took place on July 28, 1989--

Chall: Was the genesis of Three-Way the Hetch Hetchy meeting?

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<sup>1</sup>John Krautkraemer died in an accident, January 21, 1995.



Graff: No, that's where the meeting was. That's where I got the year--it might have been '90. Yes, it was 1990, July 28, 1990.

Chall: And that's when the Three-Way--

Graff: Three-Way--MWD and San Francisco--who by then, north-south-urban discussions were underway at some degree of intensity--put that meeting together. John went as our representative. I in fact had a negotiation that day sponsored by Phil Isenberg on the Baker-Isenberg Mono bill, which was one of the reasons that I didn't go. But as you probably have heard from some of the water interests, there has long been a perception by them and maybe even by some of the environmentalists who were more active even than EDF in the Three-Way, that Three-Way was this great promising possibility that was derailed by this horrible set of events in Washington that led to legislation. People have been somewhat cynical about our involvement in Three-Way.

Chall: Well, they feel you've undercut them.

Graff: And John is the one who takes the rap, at least for having--he put a lot of time and energy into Three-Way, and I think probably was thereby a major contributor to the passage of CVPIA.

Chall: How do you explain that connection? His time and energy into Three-Way and the passage of CVPIA?

Graff: Had EDF not participated in good faith in Three-Way, as John did, we could rightfully have been accused of being anti-consensus. Three-Way, as it turned out, was useful as a means to communicate among the three major sets of interests. But it was destined never to reach a definitive settlement. It simply tried to do too much too soon.

#### Leave of Absence, January to October, 1991

Yardas: Well, after the Truckee-Carson settlement passed in November of '90, I decided--I had actually planned this in advance--but in January I left for what was intended to be a six-month and ultimately turned into a nine-month leave from EDF.

Chall: January '91?

Yardas: Right, until October, beginning of October of '91.



Chall: Where did you go?

Yardas: I went to the Natural Resources Law Center at Boulder, University of Colorado.

Chall: What was this, to study what--is that a think tank?

Yardas: It was mostly just to--yes. I mean, the law center, they are sort of very active in western water policy, and I thought--my intention at that point was to maybe write a book about this Truckee-Carson stuff that had happened. I ended up writing an article; that's about as far as I got with that. There was a relationship involved that didn't work out. Many complicating factors. [laughter]

But the one thing that I remember from that time was--well, two things. One was being upset thinking, "Gee, it's great I'm taking this leave, but the one thing I'm really disappointed about is that I won't get to work with Jensen on this CVP legislation, because it will be over and done by the time I come back." [laughter] And secondly, one of the first things I got when I got there was a fax from him [Jensen], which was a draft of S. 484, incorporating many of the items that we had suggested in the NRDC-EDF letter, as well as a big piece, I believe, that included restoration funding, or a restoration trust, that he had done a lot of work on with us and with The Nature Conservancy. I also have a whole Nature Conservancy connection in some of my Nevada work.

Chall: Yes, that's a connection I didn't know anything about.

Yardas: Well, without going into too much detail, let me just say that in Nevada, the federal Newlands Project--like the CVP and virtually every other federal reclamation project in the West--has had very severe impacts on environmental resources, in this case the Truckee and Carson Rivers, Pyramid Lake, Carson Lake, and the Stillwater National Wildlife Refuge, among others. So I've been working with the Conservancy for many years in Nevada to put into place an environmental water rights acquisition program and other related reforms that are finally beginning to "undo" some of the damage. I have no doubt that some of what I've learned there has influenced my thinking here, and vice versa.

Chall: I see. Now back to Jensen. So you got a fax from him--

Yardas: Yes--on possible CVP reforms--and I faxed him some comments back on that initial draft, or that early draft, in January of '91, and

then kind of stepped out completely at that point. I think February of '91 was when S. 484 was introduced. Is that right?

Chall: Yes, Bradley introduced S. 484 on February 26. That's in my chronology. So then after that, you didn't have much to do with S. 484?

Yardas: Not until I came back in October, and then things kind of exploded.

Chall: Well, that's when things were getting pretty hot. October of '91.

Yardas: Yes. November is when the first redraft of that bill took place. I don't know if my--I think it's another of those things where I've contributed to some movement, and I also just happened to come back when things had ripened, and sort of stayed out of a summer's worth of Three-Way and hearings and all that sort of stuff.

Chall: What did you gain by having been at the law center at Boulder--for your life career or whatever--that you brought back with you?

Yardas: [Pause] A more secure funding base in my work with The Nature Conservancy. [laughs] I mean, I mean that seriously, that I solidified a real solid, long-term relationship with them. Up until that time, we'd worked closely, but it had been much more informal or arm's length. In Boulder, I worked as a consultant for them in order to finance my six-month leave, so I got kind of an inside view of their organization during that time. I was part-time as a consultant with them, and then part-time at the law center. I don't know that I--more than anything else, it was just to kind of change scenes and take a step back and think about next steps and choices. I almost thought about not coming back. I came very close to it. But I ended up coming back, in October, and today in the Nevada work, it's EDF and The Nature Conservancy. We are very much a team that supersedes the individual organizations in a lot of ways. So it's a very interesting kind of case in itself. But that would probably be the main thing, was kind of getting an inside view of TNC during my time in Boulder, and then formalizing our work on a "joint venture" thereafter.

Chall: Where would you have gone if you didn't come back here?

Yardas: Oh, I assume I would have stayed there, and either gone with the Conservancy or worked something out with EDF's Rocky Mountain office in Boulder.



## II MOVING THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT THROUGH THE SENATE, 1990-1992

[Interview 2: November 16, 1994] ##

### Thomas Graff's Offer of Advice on Reform Legislation Coupling Water Marketing and Environmental Protection

Chall: I wanted to go back just briefly to the Yardas-Garrison memorandum [September 6, 1990]. But first, Mr. Graff, I notice that in your memorandum of October 23, 1990, on the Miller bill [H.R. 1316] and other memoranda that you wrote later on S. 484, that you usually said that you'd be pleased to work with the committee to further refine the legislation, to accomplish the objectives that you had set out. I wondered to what extent you had been invited to do so after making this invitation, setting out this offer.

Graff: Well, of course, the 1990 testimony, in quotes, was never presented, because that particular hearing didn't take place, and then--

Chall: What was their response?

Graff: And then the set of four hearings that followed were all in the Senate. The only House hearing that ever took place in the actual '91-'92 sequence was very late--

Chall: Yes, in May--

Graff: In May of '92. But I think the direct answer to your question is that I personally had a lot of interactions with Congressman Miller and his staff, including then-director of the committee staff, Dan Beard, and Miller's legislative director, John Lawrence, as well as Steve Lanich and Charlene Dougherty. They had a big contingent working on this. I have brought along with me--and maybe this is as good a time as any to reference them--the

series of memoranda that I wrote over the course of the CVPIA's development specifically to Congressman Miller and his staff, probably the most significant of which was one that I sent to Dan Beard and John Lawrence on February 10, 1992.<sup>1</sup>

What I wasn't privy to but I think was agreed to by Congressman Miller and Senator Bradley was a strategy that the substantive bill should be developed in the Senate and passed in the Senate, and then returned to the House, although procedurally, a bill [H.R. 429] passed the House early in the session with no CVP reform in it, a small bit of rec reform, which ultimately was dropped, and the Trinity River provision. These were the only related provisions that were in the House bill, the reclamation projects bill, that included central Utah and the rest--

Chall: Was that a Miller bill?

Graff: Yes, I think it was a Miller bill. It's referenced in this chronology relatively early.<sup>2</sup>

Chall: I see something about an omnibus bill in October, 1990, H.R. 2567, but I don't know what all it entailed. Tom Jensen's draft chronology indicates it died in the Senate in the last days of the 1990 session, due to a filibuster by Senator Wilson.

Graff: Right, the omnibus bill. The first omnibus package in 1990, that's the prior Congress. The bill, H.R. 429, which is the bill that ultimately passed, passed the House in June of '91. That is the bill we ultimately revised. It included no CVP reform provisions nor really fish and wildlife provisions other than the Trinity River.

Chall: Explain to me what RRA is--a term used by Jensen.

Graff: Reclamation Reform Act. That's actually sort of a sensitive area, because that was a set of issues that had been pending in the Congress really ever since the prior reform efforts in the early eighties, I think '82. The sense that both Miller had, and Bradley, I think, and those in the reform community, led by NRDC, was that the intent of the reforms of the early eighties had been sort of undone by administrative action of the [Ronald] Reagan and [George] Bush administrations, and they were trying to tighten the rules on abuses of the acreage limitation in particular, and

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<sup>1</sup>See Appendix B.

<sup>2</sup>Tom Jensen provided a draft chronology of the history of the CVPIA legislation as a guide to these interviews.



residency requirements and so on. I never really got into the details of those issues, and a version of reform of those provisions was included in the original omnibus bill that went from the House to the Senate in June of '91 [H.R. 429].

### George Miller Holds Back Final Passage of the Omnibus Water Bill

Chall: Let me ask about that one. Why had the omnibus bill been held up for so many years? There is a certain feeling that this had been held hostage by the Miller committee.

Graff: I think Miller in particular, and then joined by Bradley in the later period, had bottled up a number of water projects and other changes in western water management that were desired particularly by western senators until he could accomplish some of his objectives. Up until 1990, notably dealing with the RRA in the waning days of the 1989-'90 Congress, the 101st, I guess, right?-- there had been an effort led by Miller and Bradley and by some of the Republican--well, by various western senators, Republican and Democrat, to put together a comprehensive bill. Senator Wilson, on behalf of California agribusiness who didn't like the rec reform provisions, filibustered that bill in the closing days of the '90 session and prevented H.R. 2567 from passing.

Chall: Oh, that was the problem, the RRA?

Graff: Right. And among other things, that caused bad blood, particularly between Wilson and Miller, and to a lesser degree between Wilson and Bradley, that carried over to the '91-'92 Congress, and I think probably influenced Wilson's decision over those two years not to engage. I think he has had and has a deep distrust and dislike for Miller. I'm less clear about the Wilson-Bradley relationship. I don't think it's close, but I don't think it's as antagonistic as the Wilson-Miller relationship. But I'm sure political people around Wilson were saying throughout, "Bradley longterm is a potential presidential contender, he's doing this for political advantage in California," and so on. So this colored the governor's role in the '91-'92 sequence.

Chall: But Miller had always been a sort of thorn in the side of a lot of agriculture people--

Graff: Yes. Senators like [Jake] Garn of Utah, who retired after the '92 102nd Congress, wanted central Utah reformulation badly, and Miller essentially said to those senators, "The price of your getting that is my getting what I want in California." The big

difference, really, is that the price of reform, the price of the other western states getting what they wanted, changed from '90, when it was broad-based rec reform applicable to the West as a whole, to a particular package of reforms limited to California.

And of course, with Wilson having left the Senate and an appointed incumbent, who was running for reelection, [John] Seymour, being his replacement, and with [Alan] Cranston having essentially given his proxy to Bradley, the dynamics were very different in '92 than they were in '90, where Wilson had considerably more power, even though he was a lame duck. Seymour ultimately had no allies when it came down to the end of the session, and although he tried to filibuster and [Alfonse] D'Amato I think helped him briefly, others on his side of the aisle, notably Garn, were anxious to pass the bill so that they could get what they wanted, and they had little patience with Seymour.

Senator Bradley Plans to Include the CVPIA in Final Passage of the Omnibus Water Bill

- Chall: I just was curious about why in June, when 429 passed the House-- and as you say it was rather weak--in October, when Bradley held hearings on it in the Senate he could claim that he was going to put the CVPIA into it.
- Graff: His bill had come out in February.
- Chall: That's right. And so the question that I have is why he felt so confident at that point that he could say, in effect, "This reform legislation is going to be in it [H.R. 429], and we're going to pass it."
- Graff: You know, this is one of the things that I've always found intriguing. I mean, there were a lot of times when I was a lot less confident than maybe I'll appear speaking here in retrospect, but from late 1990 on, from the time that the original Yargas-Garrison letter was written, I thought we'd have a pretty darn good shot at passing legislation in the 102nd Congress. And I think probably an advantage that we at EDF had, which we mentioned in the last interview, was real knowledge of the Bradley and Jensen operation, which was not as well known to others even in the environmental community, much less in the agricultural and urban communities. So that I think we got to define many of the approaches and sort of formulate overall structure of legislation before others started to catch on that this was a train that might actually reach the other station.

But then, of course, during the course of the two years there were ups and downs. When the Senate got bolixed up in March and April of '92, we weren't sure it was all going to come together, and then certainly in the closing moments of the session, much less when we were wondering whether the president would or wouldn't sign, I wasn't quite--we weren't quite as confident as maybe I appear now.

Chall: Well, let's see, I interrupted you, but you were discussing 429 as it related to George Miller, weren't you?

Graff: Well, I was going to go back. You asked me about the relationship with Miller and his committee, and I was mentioning the February 1992 letter. But maybe in terms of chronology, now that David's in the room, we should go back to David, because you were going to ask him about the letter to Dougherty.

Chall: Right.

#### Additional Background on the Yardas-Garrison Letter

Graff: Because I think that essentially all started when we were--well, it all started before, but in terms of the fish and wildlife parts of the CVPIA, it started with us being unhappy, and NRDC, coincidentally, being unhappy with what Miller had done with his bill in the summer of '90. So that we and NRDC sat down together and jointly drafted our critique in the form of that letter. Maybe you wanted to ask David some questions on that. That bears on how we related to Miller later.

Chall: Yes. I did read the letter, and you have already discussed something about how you had worked it out. But it was very detailed. I mean, you even indicated how they should write the bill. It was a new approach; you saw it as a new approach. You told me, I think, that Jensen was highly favorable, and he said he would use the ideas in S. 484. Is that correct?

Yardas: Well, I don't recall discussing that letter with Jensen at the time. I think that it became clear when he started cobbling together a draft of 484 that he was using or would use or intended to use some of the ideas.

Chall: You had sent him a copy?

Yardas: Yes, that we had sent to Miller. I'm sure we did, yes, by virtue of the chairmanship. I don't actually remember the precise

mechanics of how he got it, but I'm sure--I was working with him closely at that time on Truckee-Carson, so I'm sure knowing their interest in CVP, that we cc'd them and undoubtedly others.

Chall: What was the reaction of Charlene Dougherty and George Miller?

Yardas: [laughing] I don't recall any reaction. I think silence, at the time. I don't recall that they reacted one way or another. It was kind of the end of the session, and this was, in effect, "When you start thinking about this again, here are some other ideas you might want to think about."

Graff: I actually have a comment on that. The letter is dated September 6. I don't remember when they called the hearing for October 22, but it must have been after September 6, when we sent the letter. They called the hearing and then they canceled the hearing, and it was never quite clear either why they called it or why they canceled it. Part of my thinking about getting my testimony out was that, as you have just pointed out, David and Karen's letter was somewhat dense, and in terms of getting the message to a broader audience, my view of this draft testimony or testimony for a hearing that didn't take place was kind of a popular translation of the Yardas-Garrison approach. [laughs]

Yardas: Density there is--I guess that was informed in part by the process I was involved in in Nevada, in which it became very clear to me that you could have all the great ideas in the world, but with staff having sixty things coming at them at any given time, that if you wanted them to incorporate your ideas, you not only had to spell out how you thought it worked, but here's the language that you should use. Then they might use that or tinker with it, but it meant there wasn't this extra barrier for them to get over. So to the degree that that's how that reads, it was probably premature for that sort of language, but it was probably consistent with where my head was at on my relationship with staff at that time.

Chall: And how did you work this out with Karen Garrison? Was she concerned with this aspect too?

Yardas: I think we all recognized that-- As I recall, the guts of the problem in terms of the approach that had been taken to move the bill out of committee in the House, was to limit contract renewals to three years, but to authorize new contracts to move forward. And in a nutshell, what we were saying was, "No, we shouldn't have any new contracts, and what we ought to do is reallocate under existing contracts, and if you limit them to three years, the market's not going to work, or whatever." So it was really kind of a group recognition that the direction that they were taking,



particularly with the new contracts, was not acceptable, that we had to get out of that bind.

Over the years, Karen and I had sort of--I wouldn't say commiserated, but talked a lot as school colleagues and subsequently about our organizations, sort of considering the different pieces we were focusing on, and maybe that there was a way to bring them together. So we initiated the dialogue, but ultimately that dialogue involved Hal Candee and John Krautkraemer here; I think Sandy Yassa was involved on the conservation aspects; Tom. It ended up being massaged as a group effort. So it went under our signatures, but it was really something that was negotiated out, if you will, between our two groups.

#### George Miller's Response to Water Marketing

Chall: I was looking at the next bill that came out, Miller, H.R. 1306, and I'm not really sure--I thought I was sure but I'm not now--whether any of your ideas were even in it.<sup>1</sup>

Graff: Pretty much none, right, or close to none?

Yardas: I don't think so.

Graff: Miller introduced a fish and wildlife protection bill only, and didn't deal with the reform elements, as I recall.

Yardas: My guess is they started pretty much where they left off, in terms of the text that they had in their computers, and didn't--I mean, I'd have to go back and look at that, but I don't--

Graff: I think it's fair to say--and you should confirm this with Congressman Miller--that from fairly early on, they decided that the problems that they had faced in the past had always been that Miller, after some effort, and as I guess Jason Peltier puts it, "Millerizing" some of his opposition, had been able to get legislation passed through the House, only to find it bottled up in the Senate.<sup>2</sup> I think he and Bradley either explicitly or

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<sup>1</sup>The California Fish and Wildlife Protection Act of 1991, March 6, 1991.

<sup>2</sup>Jason Peltier, *The Passage of the Central Valley Project Improvement Act, 1991-1992*, Regional Oral History Office, University of California, Berkeley, 1994.



otherwise came to the conclusion that the real legislative effort of putting something on the table should take place in the Senate.

Now, as it turned out, that didn't really happen. Bradley did introduce a major piece of legislation, and Johnston put in his mark, but what actually did pass was the Seymour bill. But nevertheless, a bill ultimately did pass the Senate, and the ideas that were in Bradley's bill and the Johnston mark were definitely still in play, given particularly what Johnston said at the committee at the time the bill passed out. But that's jumping ahead.

Chall: Right.

Yardas: Yes. [looking at H.R. 1306] Significantly, this does not--not only does it continue the bar on the longterm renewals, but it does not include any water marketing aspect, which I think was the key. I mean, we saw this as a combination. If you were going to bar new contracts, and you had to accommodate new needs, then you had to have a market. If you had a market, you had to have some kind of certainty in terms of the asset you were--property interest in a marketable asset. So at this point in time, I would say that Miller and his staff had not embraced marketing, at least as reflected in the bill that was introduced.

And I'm trying to think as we're talking here, I believe that actually first was reflected in the House--I should look back through my versions here, but I believe that the bill that ultimately passed the House in June of '91 contained various marketing provisions.

Graff: It was '92.

Chall: You mean the Miller bill in '92?

Yardas: Yes.

Chall: Yes. That was H.R. 5099?

Yardas: Right. So at that point, they had picked up on the stuff that had gone on in the chairman's mark and so on, and that included marketing as a component. So they had done some internal adjusting.

Chall: I don't know what--we'll get to that, but some of that was traded off anyway. I don't know whether marketing was, but we'll get to that.

Graff: Going back, then, to your question about our relationship to Congressman Miller and his principal staff people, marketing in particular was a concept that was difficult for them to accept. Miller came from a background of wanting to confront particularly the large farmer beneficiaries of the CVP who he felt had gotten away with not only environmental degradation but financial benefits, excessive financial benefits from the U.S. treasury, and a notion that said "You can resell your contract right to water at a further profit" was not necessarily one that he immediately jumped to as compatible with his longstanding interests.

Chall: But that's understandable, is it not?

Graff: Yes, it is. So we worked with Bradley particularly and with the business community, whose support ultimately was a crucial element in passing the bill and ultimately with the urban interests, and even with some of the agricultural interests who, although they rarely admit it, did in fact benefit from that measure. We slowly worked on Miller and his staff to come to the realization that both on political grounds, this was a necessary component to getting a bill passed, and that it had substantive merit.

And in particular, this memorandum of February 10, 1992, followed meetings--I don't have this from memory exactly--it itself says it followed meetings with Dan Beard and John Lawrence, in which they both had asked me to set out our rationale for why Miller should embrace water marketing in particular, and some of the other contract reform approaches, tiered pricing and the like, that EDF promoted. So I've brought this memo, it was a confidential memo at the time, but now, two and a half years later, I think we can safely launch it into the public domain.

And then a similar, less comprehensive memo follows on April 16, after the Senate acted.<sup>1</sup> We were trying to make sure that Miller took note of our earlier memo. My earlier memo asks for response from Beard and Lawrence, which at least I never got in writing, or even for that matter necessarily orally, so I followed up with the second memo.

And then the third memo in this little series [May 27] is one to the Share the Water Coalition critiquing the House bill, the House Democrats' compromise in late May--

Chall: Now, we're talking about 1992?

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<sup>1</sup>The Seymour bill, S. 2016, passed the Senate March 19, 1992.

Graff: Yes, this is jumping way forward in 1992. But anyway, all this I guess is pertinent.

Chall: Yes, it is. But you're talking now about 5099, is that right?

Graff: Yes. But basically, though, in terms of your question: George Miller is a terrific guy and was absolutely essential to the passage of CVPIA from a political point of view for sure and a substantive point of view as well. But some of the substance in the final bill was different, at least, if not contrary to what I think he would have envisioned as being part of the bill at the beginning, including particularly the water marketing approaches.

And some of it was just tactical differences, I think. I think Beard and Lawrence, who later berated me something fierce in the briefing session that I gave in Washington the day after the Somach-Graff compromise was launched, I think had different ideas about what was tactically possible than I did, in part because they had developed these quite antagonistic relationships, particularly with the interest groups. They always had I think decent personal relationships with the Central Valley Democrats, with [Vic] Fazio and [Calvin] Dooley and [Richard] Lehman, albeit adversarial on the merits. They were quite hostile, as you've probably picked up, I guess, from Peltier's interview and even from Schuster's, although Schuster has a more complicated relationship with them.<sup>1</sup>

They, for example, I think never believed that CVP agriculture would agree to a six-dollar-an-acre-foot surcharge as part of the deal. They didn't think a tiered pricing deal would be acceptable, and so on. So there were just differences in both tactics, and at some level in ideology.

But having said all that, there was a tendency on the part of all three, of Miller and Beard and Lawrence, who are very different personalities, by the way, to not commit themselves. Even after a memo like this six-pager in February of 1992, I got no response formally. I guess it's a five-pager. But I think it penetrated--at some level. [laughs] And it all worked out in the end. And in fact, when we get to it, David will describe some of the end game in September of '92, when he was I think deeply involved not only with Jensen on the Senate side but with Miller on the House side.

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<sup>1</sup>David Schuster. An edited, but unreviewed, biographical oral history interview conducted August 1991 to February 1992, sponsored by the California State Archives, is under seal in the Archives.

Chall: All right.

Graff: Here's the set.

Yardas: Where are you timewise on your calendar here?

Graff: We're still way back when.

Yardas: You're still in 1991? [laughter]

Chall: Yes, I am--

Yardas: We're really out of phase here.

Chall: Yes. I know that you didn't come back until the end of '91--

Yardas: October of '91.

Chall: But I had wanted to get some background, a little more background, on the Yardas-Garrison letter, and so now I think I have that.

Graff: I mean, it's not that surprising. Miller, in fact, kind of hung back for a long time, waiting for the Senate to act. I know as 1991, twelve months passed, and the first few months of '92 passed and they were nearing the end of the session, he and his staff got very antsy that things weren't moving in the Senate.

#### Share the Water: The Coalition in Support of the CVPIA

Chall: I see. Let me ask you a question before we get beyond 1991. When Share the Water was organized some time in the spring of '91, how important was Share the Water to the success of the passage of CVPIA, and what did either one of you have to do with Share the Water?

Graff: Well, EDF was always a charter member. It was a charter member and an active member in Share the Water from its beginnings. I've assumed in the last interview and the beginning of this one that you got a lot of the flavor of Share the Water from Barry Nelson's interview.<sup>1</sup>

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<sup>1</sup>Barry Nelson, *The Passage of the Central Valley Project Improvement Act, 1991-1992*, Regional Oral History Office, University of California, 1994.

Chall: Yes, I did.

Graff: So we haven't emphasized it, but the California campaign, which was run from Share the Water, was staffed not only by David Behar and Barry Nelson in '91-'92 but ably by Patty Schifferle and John Boesel. He did a great job on media and hyping things and showing up at Seymour's press conferences waving placards and all that kind of stuff. They did a great job.

Chall: But where did the two of you fit into it?

Graff: We would participate in the strategy sessions, and we would attend almost all of the meetings. One or both of us would be there--

Yardas: Virtually all.

Graff: Most of them were here; a few in San Francisco, but most of them were here.

Chall: In this building?

Graff: Right here where we're sitting [a large conference room in EDF offices]. And in terms of the D.C. campaign, when Dave Weiman was hired to lobby for the coalition, it's one place where we differed from Jensen. Jensen's original recommendations focused on lobbyists that he thought would be influential with the Senate Republicans.

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Graff: Weiman was someone who was very close to Miller and Miller's staff, and not someone who would necessarily be very effective with the Senate Republicans. I argued, and Share the Water agreed--I don't think I was the only one who argued this, but I know I argued strenuously that we should have someone who we could use with Miller, and that Weiman would be fine in other places as well, and we could supplement him as needed.

It turned out that the urban agencies over the course of the two years shifted ground substantially, I mean West-wide, to become supporters of the bill, partly because they wanted CVP reformulation, and the Nevada interests started to realize that this stuff was going to be important to them long-term and so on. So we got a lot of sort of indirect lobbying assistance with the Senate Republicans from people like Guy Martin, who became the representative of the Western Urban Water Coalition, and I think it turned out to be great. Weiman did a great job for us, and where he wasn't as strong, other people stepped in.



Anything this monumental involves huge numbers of people doing very different things. Weiman had a very different role than Patty Schifferle had out here, and some of the more technically-oriented people had, and the legislative staff and legislators themselves, and business community and urban--I mean, there were a lot of different players, and obviously the campaign of Share the Water was a crucial component.

Thomas Graff

Yardas: Let me just supplement that a little bit. Early on in my involvement, a negotiating committee was formulated. I don't remember the precise membership, but Tom was one of the lead negotiators. One of the controversies was, "Well, how much water do you need?" So we sat down with the growers, after doing some homework, and told them how much water we thought we needed, and that about ended the negotiations at that point. [laughs]

Chall: That was when? Early?

Yardas: Well, it was after I came back in October. I would imagine it was either maybe December, January, something like that, of '91-'92. But anyway, I think Tom's role in the coalition was crucial, particularly because of his longstanding work with the urban community and the role that the urban community and MWD and the business community played in the CVP effort.

David Yardas

Yardas: My own role was more as--I came to call myself the lead technical analyst of the coalition. I was working with all of the other interests but trying to pull together kind of the technical underpinnings, from flow needs to the economic analysis that was done, whatever. My impression was that while I had been away on leave, the preliminary work in terms of campaign had really taken place: hearings and organizing and rallies and things like that. And coincidentally, on my return, it moved more into--the campaign continued, but it was time to just really start focusing on the substance of how things would really pull together. So part of my job, as I defined it anyway, was to kind of do that gathering.

Chall: I see. And to do that, you worked with whom? Mr. Jensen a lot?

Yardas: Well, I was more informing Tom of those issues and others. I worked with federal and state agency people, with the fisheries people, fisheries organizations within the coalition who had expertise and knowledge about certain things, with the waterfowl interests who knew the refuge water supply report well and the details and assumptions behind that. Depending on what the issue was, there were different people that you'd reach out to, but it was really a pretty large network of people that were feeding information into the process. The key was to relate that to the legislative package that we were trying to create.

### The Roles of the Urban Water Agencies and the Business Community

Chall: This might be a good time to discuss the roles of those who were outside the coalition, and maybe never would have been inside it anyway. ACWA [Association of California Water Agencies], the California Urban Water Agency [CUWA], and the business groups. They--I don't know about ACWA--they probably were terribly divided.

Graff: ACWA was basically against it. There were urban agencies within ACWA who were supportive--MWD most notably--but ACWA still to this day has an ag bias, and to the extent it was involved at all, it was neutralized by the internal divisions; it was hostile.

CUWA also was somewhat divided, largely because Santa Clara Valley Water District never liked the bill much, although most of the rest of CUWA, including MWD, San Diego, and EBMUD, were supportive.

As for the business community, we had developed a particularly good relationship with Mike McGill of the Bay Area Economic Forum, and less on a political level but on a substantive level dealing with the merits of water marketing, with the Bank of America, notably Fred Cannon. McGill and Cannon and ultimately Jim Harvey, who chaired the Business Roundtable Water Committee and who was then CEO of Transamerica, all became extremely important allies. McGill, as you may know, is now chief of staff to Senator [Dianne] Feinstein.

McGill, in fact, I give credit ultimately for having come up with the key final compromise. When Somach-Graff came out, it was an all-money, no-water approach. McGill preferred transfers and a money approach. The Johnston mark was an all-water, little-money approach. The person who kind of came up with the first memo and suggestion to split the difference, half-money, half-water, was

McGill. And he wrote a key memo which I can eventually probably find--I didn't bring it with me today--where he pitched that. I think he sold Fazio on it, and ultimately that's sort of how the thing ultimately came out. [laughter]

Yardas: One might note, though, that that came after the whole thing had sort of collapsed after the "historic compromise for a day," and after Somach-Graff revived it by doing the opposite of the chairman's mark, which was primarily water. The Somach-Graff approach was, "Well, you meet the requirements of existing law and you create this \$120 million fund." And that, in my view, reinvigorated--breathed life back into the process, and then allowed for a formula bridging the two to be articulated.<sup>1</sup>

#### Tracking the Drafting of Senator Seymour's Bill, S. 2016, 1991

Chall: I have a lot of questions about that.

In September, October, and November of '91--that's just before and maybe after you [Yardas] came back--as I understand it, the agriculture people were trying to put together some revisions in what ultimately became S. 2016. Were either of you at any time aware of what they were doing?

Graff: Well, yes. I could go back to my calendar, and in fact, I once did. I think it must have been around May of '91--maybe I mentioned this in the last interview, I can't remember--but I met with, I think it was Somach and Schuster, in Sacramento to talk about their bill. I mean, they had a draft bill, that never got introduced as a formal congressional bill, as early as May. Maybe even earlier; at least we first got hold of it around May of '91. The contractors' draft.

Chall: There are a lot of them. I note there's one in May already revised, and another one in June, and another one in September, and then there must have been another one. This is all in '91. When the '92 revision was written, I think Schuster was not in the loop.

Graff: Right. But those were mainly Somach and Schuster working together. I remember talking to them about it at a--I think it was a restaurant in Sacramento, but my memory could be playing

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<sup>1</sup>Stuart Somach-Thomas Graff negotiations discussed on pages 85-95; 97-98.



# BAY AREA ECONOMIC FORUM

A Partnership of the Association  
of Bay Area Governments  
and the Bay Area Council

July 13, 1992

To: Tom Graff, Environmental Defense Fund  
Barry Nelson, Save San Francisco Bay Association  
Tim Quinn, Metropolitan Water District

From: Mike McGill, Bay Area Economic Forum

Subject: Possible Solution to Getting Water/Money Up Front  
from the Central Valley Project

Over the past several weeks, I have been thinking about how to obtain water and/or money 'up front' in legislation to reform the Central Valley Project. Obviously, if an acceptable compromise can be found on this issue, many of the other pieces can fall into place. In this memo, I propose what could be a solution to this problem, one that could be incorporated as part of Round Two of the 'Graff-Somach' negotiations and given to the House and Senate conferees for incorporation in CVP reform legislation.

I base my recommendation on the following assumptions:

A. MWD does not like the provision in Round One of the Graff-Somach negotiations that requires them to pay \$50 per capita in order to obtain the right to buy CVP water.

B. Any long term solution to environmental problems caused by water diversions from the Bay/Delta estuary should apply to all diverters, not just the CVP, but this is difficult to achieve because the federal government does not have the authority to unilaterally impose a solution on all parties involved.

C. The least desirable method for obtaining water or money is through a tax on water sales, because such a tax would tend to discourage such sales.

Given these assumptions, I propose the following approach:

1. Allocate 800,000 acre feet of unallocated CVP water for the environment. In wet and normal years, if this entire allocation is not needed, sell a portion of it on a short term basis and place the proceeds in an environmental restoration fund.

2. Reauthorize the CVP so that fish and wildlife have the same priority as other purposes. In dry years, this would mean that if cut backs in deliveries must occur, these would be made in the same proportion from water for agriculture and water for the environment.

*The Bay Area Economic Forum was formed in 1988 to bring a regional perspective to economic issues facing the Bay Area. Through the Forum, leaders in government, business, labor and higher education join forces to develop and implement policies that promote the long-term economic vitality of the Bay Area.*

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**Possible Solutions to Getting Water/Money Up Front**  
**July 13, 1992**  
**Page Two**

3. Impose a surcharge of \$3 to \$5 per acre foot per year on all CVP water that passes through the Delta. Have the federal government match this on either an equal basis or at a 2 to 1 ratio. Place these funds in an environmental restoration fund, along with any proceeds from #1 above, with no cap on the amount that may be accumulated. These funds would be used to buy water for restoring the Bay/Delta estuarine environment.

4. Place a sunset provision on the federal match, unless the State imposes an identical fee on all other Delta water diverters, with the funds going into the same restoration account for the same purpose.

5. Additional funding could be obtained from power sales and from some sort of more modest buy-in charge and a tax on transactions no larger than proposed in Round One of Graff-Somach.

I believe this approach is appealing for several reasons.

First, it does not take any allocated water away from existing CVP contractors, although it creates a substantial fund to buy such water on a voluntary basis.

Second, it creates an incentive for the State to impose the same charge as the CVP does on water diverted from the Delta.

Third, it raises money from Delta diversions (both in-Delta and up stream) that is to be used to solve the problems those diversions cause.

Fourth, if the State buys in, all Delta diverters are involved.

Fifth, it provides a substantial amount of both water and money up front for the environment.

Sixth, it minimizes the need to target water sales transactions, or major urban water consumers, as the only, or even primary, source of the money up front for the fund.

This proposal is consistent with the Forum's position on water policy reform. It is inspired in part by a proposal MWD made in the three-way process. It is economically sound.



games with me on that. But no, we were well aware that there was a contractors' draft, and that it was basically coming from the agricultural community, the CVP agricultural community. Although at that time, Schuster was vaguely representing both CVP contractors and SWP [State Water Project] contractors, so it was never quite clear who he was representing.

But what became confusing was that the bill had not been introduced at the time that Bradley called us all back to Washington early in November of '91. We had, I guess over a two-week period, two sets of negotiations, right? Didn't we get called back?

Yardas: In November?

Chall: One in November, I have.

Graff: I think there were two, actually. In early November. I think I went to Washington twice in a short period of time.

Yardas: Basically, my recollection of that is that in early November, November 3 was the discussion draft that came out of that process, so it had to be very early in November, late October.

Chall: And November 3 was what?

Graff: November 3 was the New York Marathon, which I ran. [laughter]

Yardas: November 3--that's how we remember it--because he showed up afterward--

Chall: Pretty tuckered out?

#### Senator Bradley's Staff Revises S. 484

Yardas: November 3 was when Chelsea Congdon, Leslie Friedman of TNC, and I worked with Jensen. We took 484, or the weekend leading up to November 3, took 484 and attempted to incorporate the structural measures--screening programs, temperature control devices, barriers, whatever was kind of the centerpiece, the cement that was at the centerpiece of the growers' draft, and tried to pull that into S. 484 as introduced. We also modified some of the other provisions of S. 484. The one that's most significant, I think, is that S. 484 as introduced had a formula for contract renewals that, depending on the length of the renewal, provided a certain amount of water to fish and wildlife. The longer the

renewal, the more water was reserved for fish and wildlife; the shorter, the less. But in effect, that could be viewed as a cap on the obligation of the contractors to fish and wildlife resources.

What this November 3 draft did was it changed that formula to say, "You can renew your contracts for the full amount, but deliveries of water pursuant to those contracts shall be conditioned on meeting the following fish and wildlife restoration goals." So it became an unconditioned or unbounded liability of the CVP to meet fish and wildlife needs as a priority, even though contract renewals could take place. And along with that, the draft had this list of technical and structural fixes.

Chall: So, do I understand this correctly, that there was no limit on water reallocation to meet fish and wildlife objectives?

Yardas: Yes. Under that draft, that's my recollection. November 4 was the date.

Graff: Yes, November 4. As I recall--I have my calendar here, so it's coming back to me--David and Chelsea got to Washington a day or two before I did, helped Jensen do the revised draft. I was in Washington on the fourth of November, which was a Monday, kind of helping them put the final touches on that. That was the draft that was presented to the group of Californians who appeared in D.C. on the fourteenth of November.

Chall: Oh, I see. So on the fourth, you were working this out. I understood that you had brought in a new draft, but I didn't know just when you were all there together. But first, you did the revision?

Graff: Right. So my memory was two trips to Washington, and the first one was not a negotiating session. The first one was to complete the revised draft of the Bradley bill. In fact, one of the excuses that both the minority staff on the Senate side and some of the California interests, most notably Somach, used a week later or ten days later, was, "How can you expect us to negotiate a revised draft that we've just seen afresh? We can't be expected to be able to react on such short notice. We need to consult further." So they basically stalled the negotiation in mid-November.

#### Senator Seymour Introduces S. 2016

Chall: It was the end of the session anyway, wasn't it?

Graff: Yes, but nobody was expecting to complete anything that year. It was a week later--well, it was on the twentieth, Wednesday evening, November 20, when I met at the Coronado Hotel in San Diego with Boronkay and Somach, and they told me they were still working on a deal on transfers. They had told Bradley and the rest of us in D.C. a week earlier that they were working on this deal. But what they had not told us, and which became evident the next day, was that not only were they working on it, but they had completed it. Seymour introduced his bill, S. 2016, incorporating their agreement and the contractors' draft provisions on so-called techno-fixes for fish and wildlife as a bill supported by agriculture and MWD on November 21.

I personally took offense at both Mr. Somach and Mr. Boronkay for having told me the night before that they were still working on something, and then the next day it was introduced as a bill in Washington. They had worked awfully hard overnight, or whatever. And even taking greater offense, and more importantly taking offense, was Senator Bradley, who saw their agreement with Senator Seymour as a betrayal, particularly of his relationship with Boronkay. And from that point forward, he never forgave Boronkay and gave him a hard time throughout the remainder of the process.

#### Analyzing the Revisions of S. 484 Unacceptable to Agriculture

Chall: What changes, revisions, had you made on the fourth with respect to--well, you call them techno-fixes--but what about transfers? What was in your bill--

Yardas: Meaning the November 4 bill?

Chall: Yes, the revised Bradley bill. What was it that the growers did not accept?

Yardas: In the November 4 bill? Well, they never engaged on it.

Chall: Explain, if you will, the difference between S. 484 and the revisions you had worked out, that you thought they might accept?

Yardas: Well, it was an effort to move the process forward. As I recall, they did not like the renewal formula that was in 484 as introduced, which first arose in the EDF-NRDC letter to Miller.

Chall: Yes. So you changed that?

Yardas: So at that point, it was modified, and I found here what it says. [reads the draft] It provides for no new contracts, with the exception of 100,000 acre-feet that would be available for auction, and that was to M and I [municipal and industrial] interests, and that was consistent with 484 as introduced.

Chall: That was the way it was first introduced--?

Yardas: No new contracts, right. So that was the same.

Chall: Explain that to me: no new contracts--

Yardas: No new contracts. Part of the controversy swirling around this began in 1988, when the Bureau of Reclamation sought to market, that is, to allocate by contract, an additional 1.5 million acre-feet from the Central Valley Project to agriculture, M and I, whatever.

Chall: That means that they had not been using 1.5 million acre-feet of water?

Yardas: Good question. We thought that water did not exist, but the bureau went through a very elaborate EIS [environmental impact statement] process attempting to justify, essentially, commitments over and above existing commitments--new contracts--for another 1.5 million acre-feet per year, primarily for consumptive uses, for ag, and M and I. It was partly out of the controversy surrounding that that the so-called "no new contracts" movement arose. It was like, "Wait a minute, we've got a fish and wildlife mess on our hands, and you're trying to commit even more water."

Now, interestingly, what was called the unallocated yield of the project began to diminish the closer fish and wildlife got to actually grabbing on to some of it. We were also moving into the drought, and that kind of changed the psychology about whether there was extra water to dole out or not. So we tried first through 484, Bradley accepted this formula that we had tried to articulate, as a different way to try to do something, and to deal with the fish and wildlife problem before any new commitments were made.

The one exception to that was a provision that they put in authorizing the auction of 100,000 acre-feet of water from the unallocated yield, okay, 100,000 out of this illusory 1.5 million.

Chall: Okay. I didn't understand where that came from.

Yardas: So anyway, the November 4 revision of 484--it was clear that the formula in 484 as introduced was not going to make the growers

happy, and the renewal provisions that were linked to that. So it tried a different tack, which was to say, "Okay, you can have a renewal for the entire amount of your contract provided that the availability of Central Valley Project water under any contract or agreement in effect on the date of enactment or executed" da da da da, "shall be subject to the secretary's obligation to perform the actions mandated by subsections D through G," which were basically fix fish and wildlife problems.

So the availability of water under a new contract became then: you can have a full renewal; that's not the issue. The issue is what kind of water supply do you have underneath that. And this could be characterized as effectively an unbounded condition on the delivery of Central Valley Project water.

We didn't expect they would like this terribly well either, but it was a way to move the debate forward, and as part of that package, many of the structural fixes that were part of the growers' bill, some version of Somach-Schuster, were incorporated into the draft.

What I don't remember is whether anything different was done with the water marketing conditions.

Chall: While you're looking for that, also you did not change the contract length from twenty years? That was in the original S. 484?

Yardas: The renewal length?

Chall: Yes. Did you renew them at twenty years? Rather than forty years.

Yardas: Yes, it shall not exceed twenty years, right. And why don't you go on to another question while I look for the transfer language.

#### Water Reallocation Provisions and Transfers in S. 2016

Chall: All right. Well, then what I was really interested in knowing is how did 2016 deal with the water reallocation, the contracts? I have a note here that it would allow transfers of water without limit in the service area. I don't know what that means, because MWD apparently accepted this at that particular time and later shifted to Miller-Bradley. What does it mean, transfers without limit in the service area?



Graff: Let me take this at the sort of mega-political level, and then we can get down into specifics. I always viewed--I was surprised by the negotiating and political posture that CVP agriculture took in the course of this two years, most by one key thing, and that is they decided--and I don't know whether this was Somach primarily, or Peltier, or them and others in combination--that the big threat to them came from the environment and the environmentalists. They essentially had a choice of resisting MWD and working with us, or working with MWD and trying to resist us, and they chose the latter, despite the fact that for many years, I mean ever since the 1930s, one of the key tenets of CVP agriculture was not to have the CVP serve southern California. They wanted to keep the CVP internal to the Valley, to the service area.

It was a monumental breakthrough, which I think Boronkay well recognized, that they agreed with him on anything, that included an ability for MWD to have CVP water go over the hill.

Chall: But how could MWD get water from 2016 if the transfer of water was without limit in the service area?

Graff: I don't know what that means, but I think that one of the key provisions, which was essentially meaningless, was that there was a right of first refusal for any water that would go out of the service area. That was put into that package, and it remains in the bill to this day. It remained in the final bill, that anyone in the service area could get the water that would go out of the service area at the same price, under the same conditions as the buyer from outside the service area. It was basically an internal preference to anyone within the service area over MWD outside the service area.

Chall: But they would allow the transfer out?

Graff: Oh, yes.

Chall: I see. Was that a shift? That was a change?

Graff: Oh, it was a monumental change.

Yardas: They essentially characterized five or six different classes of transfers, which had increasingly stringent levels of oversight and review associated with them. Essentially, what you need to know is that water transfers have gone on between farmers forever, and so they didn't want to do anything that would jeopardize those. So anything that happened within the existing service area was basically fair game.

Then you had transfers which resulted in no net export of water, transfers which resulted in a net export that didn't involve land fallowing, transfers that involved land fallowing, and each of those had more and more kinds of requirements to tie them up.

Chall: I see.

Yardas: Going back to the November 4 transfer provisions, I think the only thing that's significant is that they did not differ markedly from the provisions that had been introduced in 484, which basically deferred to state law. There were three very brief provisions, unlike the final bill, which has all these checks and balances associated with it. Our effort was initially to defer to state law, but simply to clarify that individuals could allocate the water that they would otherwise use anywhere, including within or outside the existing service area, the CVP.

Graff: By the way, the deferral to state law was both a substantive position but also a political, tactical position. I still recall in the series of three hearings that Bradley held on 484-- actually, there were four; I missed one of them, the Sacramento one. I was on the Colorado River, rafting. The one in D.C. turned into kind of a posturing session between Bradley and Seymour over who was more committed to states' rights, Bradley saying, "I've got a bill that leaves transfers to state law," and Seymour denouncing Bradley's efforts to federalize the law of California water.

So they were sort of jockeying, and I recall when I testified late in that hearing, my first line was something like, "I have come here to compete as an advocate of states' rights," or something along that line. It was something I said off the top of my head, but I flashed to Bradley's history as a basketball player, and it's just always struck me as odd that the word "compete" came into my mind at that time. That's just a sort of silly aside.

But it was always an undercurrent, and Governor Wilson was obviously involved in this also, with his proposal to transfer the CVP to state control, over where should state law govern, where should federal law govern. And both Wilson and Seymour harped on that, and that's a popular position. Bradley's deferring to state law in his original bill, and as much as possible throughout, I think was meant to counter that position.

Chall: So state law had always permitted transfers?

Graff: Well, state law theoretically had been permitting transfers for over a ten-year period, since Assemblyman [Richard] Katz started introducing legislation to that effect in about 1980.

Chall: I see.

Graff: But it wasn't very effective. But nominally, transfers have been encouraged by state law for fifteen years now.

The Metropolitan Water District and Its Shifting Position on the Reform Legislation ##

Graff: There's a subject matter area that I had wanted to touch on. Maybe this is a good place to launch it. And that's MWD's role.

Chall: Yes, I would like that.

Graff: And how it behaved. It had kind of hung back through the first ten months of '91. I can't recall exactly how this worked, but Mike Gage was then the chairman of the board, and he testified at the Los Angeles hearing, and Mayor Bradley testified at the Los Angeles meeting, indicating an interest in the bill and wanting to participate and so on. So they were clearly going to be players, but they didn't take substantive--they were careful not to take substantive positions. They only really surfaced in a substantive, aggressive role with their embracing of the Seymour bill in late November of '91, which as I indicated earlier, Bradley deeply resented.

My role in this--and there were obviously a lot of other people involved--next had an interesting twist. I went to address the MWD board at its January, 1992 regular monthly meeting, not knowing that preceding me on the agenda, maybe planned only when they heard I was coming, was Senator Seymour. So he came and received the plaudits of the board for having embraced the MWD position on the compromise with the agricultural interests of contractors on transfers, only then to have the board listen to me make the case that their management had made a terrible mistake by turning their back on the people who could actually pass legislation in Washington, namely Senator Bradley and Congressman Miller. They were marginalizing themselves and they should reconsider their position of support for the Seymour bill, mostly in terms of substance as opposed to politics. They should reconsider their environmental position, which was to embrace the sort of techno-fix approach in the contractors' draft and now in Seymour, that that was inadequate from an environmental point of

view, that there had to be water and there had to be money, and there was neither in the Seymour bill, and therefore they should change their position.

I don't remember all the personal dynamics, but I know there were board members who were sympathetic to what I had to say, partly because the MWD board, being geographically diverse, representing everything from San Diego to Ventura, has a lot of Democrats on it, many of whom were not all that comfortable with embracing Senator Seymour in the middle of a difficult reelection campaign. And, I think on the merits, thinking this is kind of a dumb move. We can't pass a bill. Senator Seymour does not have the capacity to pass a bill, and we have to figure out how to recover our political position.

Senator Bennett Johnston: The Chairman's Mark

Graff: And shortly thereafter, when the chairman's mark came out in whatever it was, late January or early February, within a month or so of the time of that session, I can tell you exactly when--

Chall: Yes, I wish you would. I have it as February 20, but I don't know that that's right.

Graff: No, I think earlier versions came out much before that, but let me see. My attendance--when did I go to MWD? Yes, I was there--it was the Water Problems Committee of MWD on--

Chall: Here's a draft I have of the chairman's mark, dated February 20.

Graff: --on Monday, January 13. That's when I visited them.

Anyway, Johnston by then had had his hearing. Again, people were not aware--did I talk about this last time about Johnston's role in all this? Again, I think EDF maybe had a little bit more of a jump on this, partly because of my friendship with his son, he was coming down a lot--

Chall: Yes, you did mention that. Let me, before we go on, get that date settled.

Graff: I guess it is February 20 that he distributed the mark. I think we were aware that the mark was coming, and I assume other interest groups were as well.

Chall: And what was the reason for Johnston getting into this? Let me see, it's [William] Kahrl who has a rationale for this.<sup>1</sup>

Graff: Well, there's the old rationale of Johnston favors the Louisiana cotton growers over the California cotton growers. And there was also the factor that Johnston was working with the ports. The ports had a little bit of a role in this.

Chall: Ports?

Graff: Port of Oakland, Port of San Francisco. They were worried that restrictions on dredging in San Francisco Bay were going to be more onerous, and also into the Ports of Sacramento and Stockton, were going to be more onerous because the water projects weren't doing their share to protect the fisheries or the bay. So the ports became supporters of the legislation, kind of a "Don't regulate us, regulate them," approach.

Chall: What about the fact that his son was running for an office in California?

Graff: Yes, and I think that was obviously a factor as well; I think so. One can never tell the motives of any politician, but it also gave Johnston the excuse to come out for his hearing. He came to San Francisco in January, I guess it was, of '92, right?

Chall: It could have been January. I have it as either January or February. I had it as February, when the energy committee came out with their staffs, '92.

Graff: Oh, that was different. No, I guess the hearing was in September of '91, I got that wrong. But I think Johnston himself came out a number of times to help his son.

The staffs of the committee, they came out--when was that? That was, I guess, January of '92.

Chall: January or February of '92. I'm not sure just when that was. Maybe you'll know.

Graff: Yes, they came in--in fact, we met down in the restaurant downstairs.

Chall: For a week's tour, is that the time?

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<sup>1</sup>William Kahrl, "The Drowning of Water Reform," *California Republic*, August 1992, pp. 20-21.



- Graff: Right. And we had a briefing with them downstairs at Oliveto's, I think it might have been--well, it's possible it was February 11.
- Chall: Okay. I noticed that in this [Jensen] draft that you sent me it's indicated as December '91 or January '92, that the energy committee and the committee members' staffs traveled to California. But you think actually it was probably in February?
- Graff: Well, I have here Washington meeting, one o'clock at EDF, eleven o'clock pre-meetings. I think it was probably February 11.
- Chall: Close enough.
- Graff: In that period anyway.
- Chall: But it was early February I guess when the committee members and their staffs came out?
- Graff: I don't think any of the congressmen were along.
- Chall: Oh, I see, just the staffs.
- Graff: Right.
- Chall: To work out a compromise on 484 again. Is that right?
- Graff: Well, it was partly a field tour, to give particularly some of the out-of-state people a sense for what was involved.
- Chall: The out-of-state staff?
- Graff: Yes, staff for Senator Garn in particular, and [Malcolm] Wallop. And then some of the House Democrats kind of tagged along, or their staffs did.
- Chall: That was Ben Cooper on Johnston's staff?
- Graff: Ben Cooper was there, Weidner was a guy from--I can't remember his first name--from Senator Garn's staff. Gray Staples from Congressman Lehman's staff. Tom Jensen and Dana Cooper were both there. Was [Steve] Lanich with them? Someone from Miller's staff came along, I think.
- Chall: Roger Patterson was there?
- Graff: Did he come along? Did he come to the meeting here at our office? That I don't know.
- Chall: These are names that just come up--

Graff: Barry Nelson probably had a list of who was there. I don't have it handy, anyway.

Yardas: I might. Did you get from Barry there was a briefing book that was put together for that meeting?

Chall: No. For that meeting?

Yardas: Yes, a Share the Water briefing book was put together. That's something we should definitely get from him.

Chall: From Share the Water? No, I don't think I have it.

Yardas: I can go and get it. [leaves the room]

Graff: I just want to sort of finish the MWD thing.

One of the key developments was when the Johnston mark came out, MWD quickly essentially endorsed it.

Chall: Why?

Graff: Well, I'd like to say it was because I was so persuasive at the water problems committee meeting of the month before, but I think the reality is it finally dawned on them that Seymour was not going to get them what they wanted, and they'd better shift gears and start to work with the people who actually had the ability to pass a bill, and that meant Johnston and Bradley and Miller. But in doing so, they deeply offended their friends in agriculture, with whom they had just reached a compromise two months earlier. This will be interesting if you get Boronkay on the record here as to how they made these decisions--sort of shifting alliances. Whether it was all thought through or they were kind of stumbling from position to position.

I didn't understand initially why they went with Seymour, but I'm sure that the agricultural people never believed that, having gone with Seymour, two months later they would embrace Johnston.

Chall: But a couple of months later, they embraced--I think--Seymour again, when Seymour's bill passed.

Graff: Well, they embraced Seymour's bill when it passed, and then they embraced the House Democrats' compromise when it--I mean, they embraced anything that was moving, basically. [laughter] The one thing they didn't embrace, however, was Somach-Graff.

Chall: No, they did not. [laughter]

### Various Reasons for the Mark and Its Provisions on Water

Yardas: [returns] You asked where the--I was out; I'm sorry. I tried to gather a few pieces of paper. But you asked where the chairman's mark came from?

Chall: Yes. What brought it about? You'd been working now for quite some time on S. 484. What brought the mark out? Why did Johnston come out with his mark, and why did it allocate more water to wildlife, et cetera, et cetera? According to Kahrl, it was a "fearsome thing."<sup>1</sup>

Graff: I have a couple of theories about that. One is that Johnston had let Bradley, who was his subcommittee chairman, carry the ball for over a year, but in whatever conversations they had and Jensen had with Ben Cooper and Mike Harvey, of Johnston's committee staff, the time had come if this bill was going to pass that the chairman himself had to insert himself. And then on top of that was the complexity of the other rationales we've talked about, about wanting to perhaps help his son.

I think another factor was he just generally wanted a water projects bill, and something had to be done to break the logjam. Seymour was still stalling, and the ag contractors were stalling.

Then one thing that was always unclear to all of us back here in California was the relationship between the water projects bill and the energy bill, which was pending during the whole two-year period also, and the complex politics of the relationship between those two bills, because in both cases, there was going to be a conference in which Johnston and Miller would be the prominent actors, although in the energy bill, [John] Dingell also was a prominent actor on the outside.

There were a number of provisions that Johnston wanted in the energy bill which Miller could be expected to resist--dealing with nuclear power, with oil and gas--and so I think one of theories about all this was Johnston wanted to have a water projects bill that Miller wanted pending in conference about the same time that there was an energy bill that Johnston wanted, so that they could do some trading.

Yardas: Yes, I think that's accurate.

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<sup>1</sup>Kahrl, "The Drowning of Water Reform."

Chall: You think so? Then why was the mark different from S. 484? Why did it allocate 1.5 million acre-feet to fish and wildlife, among other provisions?

Yardas: There's a couple of answers to that. Basically, the Johnston mark, the chairman's mark, was the November 4 discussion draft, with a few additional modifications. Okay? So there had been this effort to try to do something, get 484 moving, and then that ran into the Seymour bill being introduced. There was also this unbounded obligation that I've told you about. So the idea of the 1.5 million acre-feet goes back--well, there's two explanations.

One is you can just go back to what the bureau was trying to allocate in '88, the 1.5 million acre-feet of unallocated yield. So that amount would be grabbed onto and given to fish and wildlife, but that would represent kind of a ceiling on the unbounded condition that was in the November 4 draft.

The other way to say that is what I told you earlier, that we had developed some estimates about what would be needed to restore fish and wildlife populations, in terms of the total amount of water in Central Valley rivers and streams. One could now calculate, starting with that and working backwards in terms of the CVP's share of that, something close to 1.5 million acre-feet on average, out of about 3+ million acre-feet of total need within the Central Valley. So quantitatively, there was a justification for that number on two different fronts, and it's an important number because it comes into play later in terms of the water-money mix.

But essentially, regarding the chairman's mark, I think Tom's comments about getting the process moving and other factors was kind of a justification. It was still essentially Tom Jensen moving the package forward, but now, for whatever reason, in their judgment, with the sponsorship of the chairman.

Chall: And were you working on this mark, the draft of the mark?

Graff: Yes. [laughter]

Chall: Yes! You can't just shake your head, the tape doesn't pick that up.

Yardas: There's a piece I'll try to find for you that was put out by the National Water Resources Association. Have you seen the newsletter piece, the title of which I think is alluded to in the chronology here?

Chall: No, I haven't.





# NATIONAL WATER RESOURCES ASSOCIATION

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## NATIONAL WATER LINE

March 1

# Johnston's CVP Bill Stuns the West

Historically, southern senators have ardently supported their western colleagues on water management and development issues. The strong bond between west and south on most all natural resource issues has resulted in the authorization and funding of many important resource projects opposed by environmental activists. This alliance was the primary reason that the highly controversial Tennessee-Tombigbee Project (in Mississippi, Alabama and Tennessee) was completed, despite overwhelming environmental opposition, in the early 1980's.

Therefore, Western Senators were understandably stunned this month when Senator J. Bennett Johnston (D-LA), chairman of the Energy and Natural Resources Committee, offered draft legislation, referred to as the "Chairman's Mark," as a starting point for markup and debate of the Central Valley Project (CVP) fish and wildlife legislation. The draft legislation was promoted as a compromise between legislation (S. 484) introduced by Senator Bill Bradley (D-NJ), which imposes strict environmental conditions and restriction on the operation of the project and contract renewals, and legislation (S. 2016) introduced by Senator John Seymour (R-CA) which is more favorable to Valley farmers. However, the Johnston draft is considered by many as a more draconian version of S. 484.

For several months, meaningful negotiations have been underway among the State, Valley farmers, municipalities, and environmentalists in an effort to fashion a compromise. With the announcement of the Johnston draft, those negotiations have now broken down.

Senator Malcolm Wallop, Ranking Republican Member of the Energy Committee, immediately wrote to the Johnston saying, "I understand from our earlier conversation that you had intended to try to bridge the differences between the legislation introduced by

Senator Bradley and that introduced by Senator Seymour. Unfortunately, this "Mark" incorporates the most onerous provision both the original Bradley legislation and the staff draft which circulated in November. It will undercut the agreements which have been achieved in California between the urban and agricultural interests. In addition, it frustrates the considerable progress which had been made with the conservation community." ... "I cannot support punitive legislation which, I believe, would cripple the Project and have severe repercussions on both the environment and the economy of California. Frankly, several members of the Committee do not see your "Mark" as a step forward but rather a severe reversal. They do not see how it forms any basis for discussion and hope that you do not propose it."

California Governor Pete Wilson was also quick to react. Wilson announced that he vigorously opposes Johnston's proposed legislation because it would have a widespread and severe impact on California. "Our analysis indicates that the state's economy will be unnecessarily and severely affected should your proposal become law," Wilson said. "The proposal's prescriptive allocation, applicable not only during the sixth year of a devastating drought, but in 'normal' years as well, is neither a reasonable nor responsible means of responding to the Central Valley's fish and wildlife needs," Wilson said.

Wilson said California cannot and will not be steered toward a process that seeks to adopt unworkable "formulas" that pits environmental protection efforts against the needs for food and jobs. Wilson also announced that he will immediately appoint representatives to initiate negotiations with the Bush Administration in an effort to negotiate the transfer of the Central Valley

*Continued on Page*



Continued from Page 1

ject to state control. Wilson said, "Only in both the CVP and the state's own water delivery systems operate uniformly under the same rules and requirements, will California be able to meet in a balanced and integrated fashion the needs of the environment, the agricultural industry and all who depend upon it, and municipal and industrial users."

Johnson's legislation would:

Immediately dedicates 1.5 million acre-feet of water a year "primarily" for fish and wildlife purposes. In dry years this cannot be reduced below the *smallest* water cutback the Secretary announces for any other CVP contractor. The cost of this water will be added to the costs paid by CVP contractors.

Require additional water (340,000 acre-feet minimum for Trinity River flows, as much as 450,000 acre-feet for wildlife refuges, and operational changes such as increased carryover storage) for fish and wildlife purposes. The cost of almost all of this water will be added to the costs paid by CVP contractors.

Reauthorize the CVP to include *enhancement* of fish and wildlife (not just mitigation of past actions) as a Project purpose.

Prohibit any new CVP water contracts (even those for a single year) until the fish and wildlife goals of the legislation are met, the State's Bay-Delta proceedings are completed, and the EPA approves of the Bay-Delta standards.

Despite the prohibition on other new water contracts, authorize the "auction" of 100,000 acre-feet for urban uses. Most of the revenue from the auction will go to fish and wildlife projects, and so the capital cost of this water will be added to the costs paid by CVP contractors.

Allow (but does not require) renewals of present contracts for no

more than 20 years, and only after full environmental analysis of the effects of renewal of each contract. The Secretary must also do another analysis of the environmental effects of renewal of *all* CVP contracts.

o Surcharge CVP water and power sales \$30 million per year for fish and wildlife purposes.

o Upon renewal of contracts, increase the districts' water rates to one-half of full cost for 20 percent of its water and to full cost for another 20 percent of its water. Only the first 60 percent of the water supply will be at the contract rate. Districts will no longer have to pay for water they cannot use.

o Starting in the first water year after the law is passed, require full cost water rates for all water used to grow crops for which a USDA Acreage Reduction Programs (rice, wheat, corn, cotton, etc.) exists, even if the farmer is not in the program; except in districts which give 75% of the difference between their contract rate and full cost to the State. In drought years, the amount of water delivered the prior year to such crops will be cut first even if those crops will not be grown again in the drought year. These provisions do not apply to water delivered under water rights settlement or exchange contracts.

o Only *after* contracts are renewed or amended, allow transfers of project water. Individual water users can arrange transfers of their share of a district's water, without the district's review or approval. Transfers for irrigation purposes will be at full-cost. 25% of the water or 25% of its proceeds must go to fish and wildlife purposes. The only protection for third party impacts of transfers is that the Secretary may (but is not required) to agree to send 1/2 of the 25% "tax" on the transfers to the State.

o Upon renewal of water contracts, require metering of all wells and

surface water delivery systems in the district, and annual reports of groundwater use to the Secretary.

o Require a study and report to Congress on, among other things, (1) the effect of the CVP on communities, tribes, etc. associated with anadromous fishery resources; (2) water supplies for an additional 120,000 acres of waterfowl habitat, outside the existing refuges; (3) removal of barriers to upstream salmon migration; and, (4) control of irrigation return discharges. There is no provision for a study of the economic effects on CVP contractors or their communities in the Bill.

o Without building any facilities, authorize the Secretary to acquire water to fulfill the goals of the Act, including the direct purchase of water or land.

o Impose new review criteria on districts' water conservation plans, but provides for a Federal cost sharing of 70% of conservation measures installed before December 31, 1996.

Tom Donnelly, NWRA's Executive Vice President, told legislators, "Equitable resolution of the CVP fish and wildlife issue is vitally important to the entire West. Senate bill, S. 484, is precedent setting legislation which could and likely would be applied to the resolution of environmental concerns on any river or river system with a federal impoundment or project. Therefore, NWRA is prepared to assist the Committee in any manner in order to reach a meaningful compromise."

Senator Bradley's insistence that the CVP fish and wildlife bill be part of the "omnibus" reclamation package, represented by HR. 429, presents yet another significant hurdle for passage of reclamation reform legislation and the many important projects awaiting authorization.

Committee markup originally scheduled for March 4 has been cancelled but could be rescheduled as early as March 11.

Yardas: It says, "Johnston's mark stuns the West," and it goes through and gives a critique. It's a great piece. I'll find that for you.

I wanted to give this to you. There's a comparison here that was done which shows the Seymour bill, 484 as introduced, and the November 4 draft. Here is another one made up shortly thereafter that includes the Johnston bill and the Miller [H.R.] 1306, but does not include the November 4 draft, since this was now superseded by the Johnston bill.

You had asked about our concerns about the Seymour bill. In a nutshell, it had enough water in it to pour the cement that would be needed to build all of the structural fixes that the bill sponsored, but that's about it.

Chall: I have this--Share the Water did give me this. [Summary Discussion Points on S. 2016. January 14, 1992]

Yardas: Oh, you do. That gets into some of the justification for why we thought we needed what we needed in terms of water, how it came into play. Because they wanted us to be specific, and so we said, "Okay," and we were.

Graff: You know, I might say one other thing about Johnston. Although looking at it in retrospect it seems like Johnston throughout was an ally of the environmentalists in this whole process, by no means were we confident of this as we marched through the process. His record as a senator before and since can best be described as a mixed one, where occasionally he'll side with environmental interests, but he on many occasions has been known to side with interests hostile to environmentalists. I mentioned nuclear power and oil and gas issues, Alaska oil and gas issues are some of many.

And even in water over the years, he hadn't been an aggressive adversary, but in general, he tended to favor the more conservative and agricultural interests on issues. I think he saw the way to make his agenda--I don't think he had an affirmative agenda that supported California agribusiness, but he traded votes with them readily to get things he wanted, I think.

So I think part of why the headline was "Johnston mark stuns the West," is that from the point of view of the NWRA [National Water Resources Association] constituency, the Western water constituency, Johnston's doing what he did, was very surprising, out of character.

My personal relationship was with Ben Cooper and Mike Harvey, his principal staff. I really never dealt directly with the

senator; I shook his hand at the hearing, and that was about it, the one in San Francisco that took place at Fort Mason. I think they had a kind of a personal interest, and they were sort of intrigued by the whole thing. As near as I can tell, and maybe someday you'll get to ask Tom Jensen this directly, the Johnston staff gave him a lot of support throughout the whole two-year process. Though other senators from other states who had friends in California agribusiness circles, notably Senator [Kent] Conrad of North Dakota was one that was mentioned from time to time, and one or two others--[Richard] Shelby of Alabama--were ready to withhold votes from Bradley and go with Seymour at different times because they weren't getting what they wanted.

And Congressman Fazio, who had a lot of dealings with Johnston on the appropriations side--Johnston not only is chairman of--well, not is, I guess we're in a new era now--was chairman of the Energy and Natural Resources Committee, which is a policy committee, but he was also chairman of the appropriations subcommittee dealing with these issues, so he had a kind of a double role. Fazio was to some extent not quite his counterpart, but the number two person in the House, and had a lot of dealings with Johnston. Fazio I think frequently made efforts, sometimes more or less successfully, to end-run Bradley by going through Johnston. So this was all happening as well.

Chall: I could never work in that system. [laughter]

Graff: In fact, Fazio is somebody I want to get to. That's one of my little plans here for the day.

#### The Senate Energy and Natural Resources Committee Passes the Seymour Bill

Chall: Yes, we will. I'm going to move us now from the Johnston mark to the March and April actions concerning the passage of the Seymour bill. There was between March 9 and 11--I maybe got this off of the Jensen chronology--there was a round of negotiations over the CVP bill; Seymour was willing to make a few changes. Now, I guess this was the negotiation in the Johnston-Bradley [energy] committee. Were they negotiating over the mark or over the Bradley bill? Do you know?

Graff: Well, I think David will probably have more to say about this than I will, but this varied between being a senators-only discussion, as I remember, and one where Senate staff were allowed in, but no interest groups were party to this negotiation. This was within--



among the senators only. Basically, we heard rumors of all the things that were discussed in those negotiations, but I don't think we ever actually saw, at least on an official basis and maybe even on an unofficial basis, what they actually put down on paper. You can correct me if I'm wrong on that.

Yardas: I had some glimpses, but I guess I would characterize--I think in general it's an accurate statement that this was one that was being done--while I had had a close interaction with Tom [Jensen] in particular on many of the previous drafts, this was one that was done pretty much behind closed doors. In fact, I remember standing in the hallway talking with Mike Doyle of *The Sacramento Bee* who was--I'm sorry, he's not with the Bee, but McClatchy, I guess--and we were chatting in the hallway outside the energy committee library where these discussions were taking place, wondering what was going on. I think I made some phone calls or whatever. I remember at that point Seymour coming out first and then a couple of other senators, and then Jensen coming out, and basically saying something like, "Well, we're going to pass the Seymour bill."

Chall: That must have been a shock to all of you.

Yardas: It was a shock. Exactly how far they went in terms of trying to meet his concerns or whatever, I don't know, but it was definitely an effort that was done with the big boys in the room trying to reach some kind of negotiated agreement. I think the notes that you have reflect the ultimate agreement, which was, "Fine, we'll pass your bill as introduced, but no commitment in terms of what happens thereafter." I guess that was offered to Seymour: "We can either negotiate here and reach some understandings, or negotiate later and take our chances--your choice."

Chall: So I gather you were all shocked. Senator Seymour may have been puzzled, unsure that he had won.

Yardas: Well, part of what Seymour was trying to do wasn't substantive at that point. I think it was to push things far enough that basically it would collapse of its own weight at the end of the session. If you start playing the calendar game in Congress, when you're in March, and you've still got to get through the House, and then come back to the Senate, things start to get gobbled up. So I think he [Seymour] was banking on the whole thing basically gumming up.

Chall: How soon did you get over your shock? Was it explained to you what they had in mind?

Graff: I was in California, David was in Washington, and I'm trying to remember--I remember talking to Jensen initially, and then to Bradley--I can't remember whether it was on the phone or the next time I was in Washington--and both of them trying to reassure me and by extension others in the environmental community that this was the right outcome; we should have confidence that Senator Johnston, whose idea this was, was really ultimately going to be on our side when we got back to conference later in the year.

What made those assurances slightly less persuasive was that they were 180 degrees different from what Bradley and Jensen had been saying was their strategy a day before. So it's clear that this was a Johnston decision that was different from and I think argued against by Bradley, but once it was made, Bradley and Jensen were left with the job of persuading the environmentalists that this was an okay outcome.

Miller, I know at the time, was furious at Johnston and Bradley for giving him the Seymour bill to work with. We were probably as puzzled as Seymour was, whether this was going to all work out in the end or not.

Chall: But wasn't it difficult in that committee to get the Bradley bill out? Johnston only had the mark. Did they feel because of the Republicans or others on the committee that they couldn't pass out their own bill?

Graff: Well, we were always counting votes in that committee, and as I said, a couple of the Democrats, notably Conrad and Shelby, were always--

Yardas: Former Democrats.

Graff: One of whom [Shelby] is a former Democrat--were said to be squishy. But you never know in those situations. Garn wanted a bill. I'm sure Seymour never was sure whether Garn would back him. The same was true to a lesser degree of some of the other Republicans on the committee. [Mark] Hatfield, for example, who has some sympathy with the fisheries, coming from a coastal state, was sort of vaguely a progressive on water issues from time to time. So that the makeup of the voting on the committee itself was never clear.

Chall: But I guess you had to feel--

Yardas: It was definitely a low point.



- Chall: Yes, it must have been. But you had to feel that perhaps Johnston knew that he didn't have the votes and was willing to take this chance.
- Graff: Well, that's what we were told. Johnston couldn't pass a good bill out, so--
- Chall: He took this way out.
- Graff: --so we'll take Seymour's bill and we'll get them later. That's what he did.
- Chall: And then on April 10 the Senate passed it.

The Senate Passes the Seymour Bill: Title 34 of H.R. 429

- Yardas: Yes, no amendments, no changes, the bill as introduced, which had some problems. It was clear that that bill as introduced wasn't even at that point necessarily--and I don't remember the particulars--but the growers had some second thoughts about some things. So it was definitely not going to stay as it was, but for purposes of getting out of the Senate, it was--
- Chall: Now it's moving. Okay, now, in May, Miller came out with H.R. 5099, which was similar to the Johnston mark--
- Yardas: Correct.
- Chall: How similar? I don't know, and maybe it doesn't matter. But that was one way, I guess, for him to get something on the table in the House that was better than 2016. Is that the reason?
- Graff: Yes. But actually, what passed the Senate was H.R. 429 as amended to include the Seymour bill. And meanwhile, of course, it included a lot of these other titles. It became title 34 of H.R. 429.
- Chall: That's correct, we have to be accurate about that.
- Graff: And I think--this is fuzzy in my memory--but as I recall, just from a procedural point of view, Miller was trying to figure out, "Should I amend new provisions into H.R. 429 as amended, or introduce a new bill that we'd eventually couple with H.R. 429?"
- Chall: You don't know how this happened?

Graff: Well, I think they made the decision--I can't remember all the reasoning--that it was better to introduce a clean, new bill.

Chall: Okay. And he'd use the Johnston mark as his basis?

Graff: As a starting point, that's right.



### III NEGOTIATIONS AND FINAL PASSAGE OF THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT: THE OMNIBUS WATER BILL

#### The Debate Moves to the House ##

Yardas: I started spending time at this point over on the House side of the hill, with Miller's staff. We developed a wish list where we kind of went through--I mean, remember that Tom had mentioned earlier that for a lot of this early work on 484, the House was just kind of waiting. They had done their fish and wildlife bills the prior years; they were waiting, and in some ways not engaged. Like going, "Well, we'll wait and see what the Senate gives us," and that's why when they got the Seymour bill it was like, "Oh, great, thanks a lot."

So at that point, they had a learning curve to get up to in terms of what was this chairman's mark, and what were you guys trying to do?

Chall: Yes, I guess that's true.

Yardas: So we spent a lot of time with them working through--

Chall: "We." "We" are who?

#### Drafting H.R. 5099: The Central Valley Project Improvement Act

Yardas: Myself in particular, but I'm sure they consulted probably with other Share the Water interests as well. But I spent time with Steve Lanich in particular and other staffers--what's her name?

Graff: Liz Birnbaum?

Yardas: Liz Birnbaum, who used to be with the National Wildlife Federation, I think. John Lawrence, as well, would come in and out. I was brought on to Miller's staff--walking through the chairman's mark top to bottom, and Steve asking questions, sitting there on his computer modifying things, changing things, basically trying to turn that into as ideal a bill as they might like.

And then what they ended up introducing in H.R. 5099 was a modification of that, that incorporated--included--a lot of what we had talked about, and changed other things. Obviously, there had been some subsequent consultation that we weren't party to. But I think in significant terms, the 1.5 million acre-feet, for the first time water marketing provisions, similar, I believe still, to S. 484 at that point. There was now a vehicle, at least, that kind of reinvigorated the collapse of the Senate process, or at least gave us something to work with.

Chall: So 1.5 million acre-feet of water?

Yardas: Well, 1.5 million acre-feet of water, and if I remember right, also authorization that the secretary would have whatever authority he needed to modify project operations to do whatever. So it was basically still kind of the old, unbounded liability, plus 1.5 million up front.

Chall: And transfers?

Yardas: Water transfers with some additional protections that had to be fish and wildlife friendly. I don't remember; I can walk through this a little bit and get a couple of salient points, or try and find another chart comparison. But momentum-wise, it put the chairman's mark back into play. I think most significant is that the Bradley construct was now being taken up by Miller and put forth as his bill.

#### George Miller Strikes a Deal with Valley Democrats

Chall: Now, then, he made some kind of a deal with Fazio, Dooley, Lehman, and weakened it, according to everything that we read. The growers were angry with their representatives, and the environmental community was not pleased. Can you explain all that?

Graff: One of the things I gave you earlier, the third of those Miller drafts, lays out at least my personal critique of what David refers to as the House Democrats' "historic compromise for a day."



It got massive publicity throughout California as a wonderful thing, and by twenty-four hours later, the Valley Democrats were backpedalling furiously. It didn't take much longer before we were critiquing it from the opposite perspective as well, and the thing just sort of unraveled.

We maybe should get back to the substantive reasons for that. The result of that politically was that you had a bill that had been reported out of committee, and Miller, maybe without his constituency behind him, might have taken it to the floor and passed it just because he had so much credibility and power in the House. But the Valley Democrats and the constituencies were strongly opposed. Miller had MWD sticking with him. They were the only ones who liked it. But it had kind of a, "What do we do next?" sense about it.

I can't remember--it was the last week of May that the bill passed out of committee, and within a week, I got a phone call from--I can't remember exactly the sequence--but I guess I got the call from Somach, who had been called by the Valley Democrats, saying, "They want me to sit down with you; will you sit down with me?" I said, "I can't do that without talking to Beard."

I talked to Dan and Dan concurred, and said, "We don't promise to support anything you come up with, but go ahead and talk to Somach, because right now things are stalled back here in Washington, and maybe you guys can come up with something that breathes new life into this process."

#### The Restoration Trust, the Restoration Fund, and the Advisory Committee

Chall: Now, before we get into Somach-Graff, I have a question. Could you explain the Restoration Fund? Because this is something that seems to move around a bit. What was the Restoration Fund and what was the Restoration Trust?

Yardas: Well, the Restoration Trust was essentially a kind of the corpus, the oversight entity, that would utilize the Restoration Fund to do good work. So the trust was an independent, nonprofit restoration group or whatever that had a certain charter and certain things, when originally conceived, that would essentially watch over the fund and do good work with it. That, along with several other things, got dropped, and exactly where? I think that may have been dropped right with the first efforts to modify

the discussion draft or the chairman's mark. I think that it may have been dropped at that point. Not the fund, but the trust.

Chall: And the fund? Did you keep the fund?

Yardas: The fund was in every version. The amounts that it supported went from \$30 million down to \$15 million then up to \$120 million, and it ended up at \$50 million, so it bounced around. Over time, it came to bounce around in conjunction with the amount of water that was dedicated. Once we got into this notion of dedicated yield, then it began to be a story told about how you could get back to 1.5 million acre-feet as the CVP's contribution to fixing Central Valley and Bay/Delta problems by using some combination of water and money. That's the formula that ultimately was articulated by Mike McGill and the [Business] Roundtable which Fazio picked up and supported.

Chall: I see. So the fund remained. There was also an advisory committee.

Yardas: A fish and wildlife advisory committee, yes.

Chall: That was in the early Miller bill, I think.

Yardas: Oversight. They all got dropped on a couple of theories. I think the Republicans did not have any interest in creating new bureaucracies. We had endless struggles over what the memberships of those groups should look like. The feeling was that if they were equal, ag, urban, environment, then we were in trouble, but how could we get something through that didn't have that representation? So that was a problem.

Ultimately, the Federal Advisory Committee Act was presented to provide all the authority that was needed. The secretary could appoint and name whatever advisory committees he or she wanted to, to oversee the fund to do whatever; that wasn't something that had to be legislated.

Chall: Well, I just thought I'd better get that straight before we move on.

Somach-Graff; let's go into that, unless you have something else you want to say first.

The Environmental Community Criticizes Congressman Fazio

Graff: Yes. I thought I would go back in time to late March, a meeting with Share the Water coalition here in our office on March 30, when we got wind of where Congressman Fazio had just made some speeches or been quoted in the press, or both, exulting at his role in having helped Senator Seymour defeat the Johnston mark. At the same time he was beginning to support attacks on the Endangered Species Act, and was actively pursuing the construction of Auburn Dam, a flood control dam at Auburn. As I recall this meeting at Share the Water, I said, "It's time for us to send the good congressman a message." People kind of came together. I think Dave Weiman was on the phone with a conference call. We had the phone in the middle of the table, and maybe Patty Schifferle was there, too. I can't recall all the people there.

But I do remember saying, "Let's do it," and so while the meeting was going on, I did a first draft of a joint letter of Share the Water members to Mr. Fazio. Ironically, Hal Candee, who has the reputation of being sort of harder-line than I, then edited it in a way that toned it down. But even the toned-down version that he and I and Barry [Nelson] and David [Behar] and Patty McCleary of the Sierra Club then signed, as you will see, was a fairly aggressive letter announcing to the congressman that we were unhappy with his position on all three issues.

That letter then appeared in the press a couple of weeks later in a front-page story entitled, "Environmentalists Sting Fazio with Criticism."

Chall: Which press did that go into?

Graff: It was in the *Daily Democrat* in Woodland, California, in the middle of his district.

Chall: You sent it there?

Graff: Well, I don't know how it got there.

Chall: Somebody sent it.

Graff: It got there. And ironically, it appeared the same day as he met with the local environmentalists in his district, which I think was just a coincidence. He was very unhappy that this appeared, because he was in the middle of a difficult reelection campaign.

Chall: It has been difficult even now [1994], I understand.



March 30, 1992

Hon. Vic Fazio  
U.S. House of Representatives  
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Washington, DC 20515

California Office  
Rockridge Market Hall  
5655 College Ave.  
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Fax: 510-658-0630

Dear Congressman Fazio:

We are writing to express our deep concern about several extreme anti-environmental actions you have taken in the water resources area in recent times.

One is your unrelenting pressure on the Bureau of Reclamation to increase water deliveries to the subsidized growers of the Central Valley, irrespective of the impact of those deliveries on fish and wildlife. Newspapers have reported that this has included inquiries regarding endangered species which seem to presage an attack by you on the Endangered Species Act.

Two is your continued intransigent crusade to build Auburn Dam, damn the environmental consequences, whatever the facts. You are as aware as any that the Sacramento Area Flood Control Agency's own consultant has totally undermined your rationale for building the dam.

Three and most significant are your attacks not only in the House, but in the Senate, against Central Valley Project water reform and fish and wildlife protection. You took credit in the Bee for stopping the Bradley/Johnston legislation in committee. That is an outrage.

David Behar  
Bay Institute of San Francisco

Thomas J. Graff  
Environmental Defense Fund

Hamilton Candee  
Natural Resources Defense Council

Barry Nelson  
Save San Francisco Bay Ass'n

Patricia McCleary  
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1800 Guadalupe  
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Graff: He continues to have difficulty up there. He's in a tough district.

Opposition to Auburn Dam Joined to CVPIA Debate

Graff: What I think I particularly wanted to bring this up for is that one thing EDF I think probably most uniquely among the Share the Water coalition focused on during the course of the whole year was Auburn, which we had been long-standing opponents of. In fact, the day before this article appeared in the *Woodland Democrat*, John Krautkraemer, my colleague, and I did an op-ed in the *Bee* blasting Auburn, and Fazio and [Robert] Matsui's plan for Auburn. And not long thereafter, got the *L.A. Times* to editorialize against Auburn as well.

Meanwhile, Bill Kahrl, as you know, had Auburn and the Fazio-Matsui-Corps [Army Corps of Engineers] plan as his favorite project.

Chall: No, I didn't know that.

Graff: And he got quite upset with us.

And what I think most significant was that, during the course of the year, we came to fear that a trade might take place, where Fazio might agree to some version of CVP reform if in turn Bradley and Miller would agree to Auburn. A part of my thinking in writing this letter and in the op-eds, and in getting the *L.A. Times* to weigh in on its own, was to make sure that the price of CVP reform was not another dam on another California river. So this is the Fazio package.

Chall: Thank you.

Graff: And this is a series of letters that I wrote in August--jumping ahead--because we've got Auburn on the table now. I met with Senator Bradley, I met with Senator Seymour, I met with Dan Beard, and I met with Fazio. I always sort of do things against the grain. Most people said, "It's recess time, everybody's waiting, the real action's going to take place in September, why are you wasting your time going to Washington in August?" But it turned out to be a great visit, because I actually got in to see all those people, which is hard to do when things are really hopping.

And on the plane home I wrote these four letters to Senator Bradley's staff, to Dan Beard, to Congressman Fazio, and to



Senator Seymour, following meetings that I'd had with them. Probably the key messages were, "Auburn's not up for trade." The message to Bradley and Miller was, "You can't do that." And the message to Fazio was, "We're willing to work with you on American River flood protection but not on a dam."

#### Pondering Senator Seymour's Reluctance to Negotiate

Graff: The message to Seymour was, "You told me--" This goes back to something you asked at the first interview, and Rich Golb and Barry Nelson I know have sort of been at odds over this over the years: Did Seymour meet with environmentalists or not? He did meet with me that visit, and told me that he wanted to negotiate, he wanted to deal, and that he would be contacting Senators Johnston and Bradley to work on a deal. So I thought I would memorialize that in a letter to him, and I did so, saying, in effect, "I was glad to hear you wanted to deal, look forward to hearing that you've contacted the senators you've said you would, and I hope you contact Congressman Miller as well." To my knowledge, that never occurred thereafter.

Chall: And why do you think it didn't?

Graff: I don't know. I mean, I'm sure there's sort of deniability on Senator Seymour's part--former Senator Seymour's part--that he had conversations of some kind with Bradley and Johnston. I don't think he ever did with Miller, although he didn't tell me he would. But I don't know. I was always puzzled because, mainly through my conversations with Somach, and other ways, maybe Fazio's staff, Roger Gwinn, and others, I would get the impression that Seymour really did want to deal. I'd be curious someday to read Rich Golb's interview to see whether that's true from his point of view. I did have the impression that Seymour had a different point of view than the governor, who by that point I think it was clear didn't want a deal, although as you'll see in this chronology, at least it was Tom Jensen's view that early on, he and Bradley talked and he told Bradley he was interested in Bradley proceeding.

Chall: That was Wilson?

Graff: That was way back. That was mid-'91, so that was considerably earlier. But the fact is that Seymour, after the attempts at negotiation in the spring of '92, never really got serious about negotiating something that at least the environmental community and Miller and Bradley could buy into.



ENVIRONMENTAL  
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August 14, 1992

Hon. John Seymour  
United States Senate  
367 Dirksen Office Building  
Washington, DC 20510

Dear Senator Seymour:

I just wanted to thank you for taking the time out of your busy schedule Wednesday to talk with me about CVP reform legislation.

As you and I both know, passing legislation which addresses the interests of all the major stakeholders is a complex and difficult matter. However, EDF and I personally have been and remain committed to this effort. While we oppose the legislation you have introduced primarily because we do not believe that it adequately addresses the environmental problems caused by the CVP, I was pleased to hear personally from you of your commitment to work with your colleagues in Congress to find a legislative outcome which does address our concerns, as well as the concerns of other interested groups. I hope that by now you will have expressed this interest directly to Senators Bradley and Johnston and that soon you will communicate it as well to Congressman Miller and others.

Sincerely yours,

Thomas J. Graff  
Senior Attorney

TJG:mjg

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So I never quite understood where he really was at. And maybe part of it was that he was new to Washington, he was in his first term, two-year term, he was running for reelection. That was tremendously demanding. So maybe he just didn't know how to do it, or didn't have the time, or whatever. But this was his big issue. I mean, he, after all, chose to go on this subcommittee, he raised substantial amounts of money from agribusiness interests as part of his campaign. His opponent, [Dianne] Feinstein, nominally supported Miller-Bradley. But it always seemed to me that his best chance of getting reelected would have been to be part of an historic bill rather than in opposition.

Anyway, these letters, I think, are probably interesting--

Chall: Thank you.

Graff: --for being part of the record.

#### The Somach-Graff Negotiations

Graff: So you wanted me to turn to Somach-Graff?

Chall: Right. Now, you said that you had been called by Somach--

Graff: No, in fact, I think I was called by Joe Raeder, who was Dooley's aide, first, saying, "Dooley really--" He was a freshman at the time. He had been embarrassed by the House Democrats' compromise for a day, was getting a lot of heat from his constituents, in Friant and the Westside both, and sort of anything was better than--partly you could say, "Hey, better to deflect the heat on Somach and Graff than to have it coming down on Dooley."

In fact, I just heard recently--this is, what, two and a half years later, after the '94 campaign--Dooley is still being attacked in his election campaigns down there for having voted for Miller-Bradley. Well, he never voted for Miller-Bradley, he voted for the House Democrats' compromise for a day, and is therefore viewed by some in the Valley as having contributed to the ultimate bill, even though he voted against it. And he voted against it on the floor of the House also.

Chall: It always is interesting to me that if the compromise would have been in the favor of the agriculturalists to some extent, why they didn't accept even that much of a compromise.

Graff: Why people in the Valley didn't? You'd have to ask them. My view is that there was so much uncertainty in that formulation that both sides read into it sort of the worst case, because it essentially left decisions about operations and water allocations to the discretion of the secretary. So a secretary of the Interior or a commissioner of reclamation who favored environmentalists, from the ag point of view, could wreak havoc, and one who was like James Watt or others would have been pro-ag, would have been able to do in environmental values.

There was no specific allocation of water to the environment, as there had been in the Johnston mark, the 1.5 million, and there was--I can't remember whether there was still a Restoration Fund, but it was minimal.

Yardas: It was \$15 million.

Graff: And from our point of view, that was no money, no water. It was all discretion, and we just couldn't live with that.

But looking here [at old calendars], I guess I met with Somach essentially every day of the week of June 8. The eighth, the ninth, the tenth, the eleventh.

Chall: Every day?

Graff: Well, at least those four days. I don't always mark things in my calendar, but at least those four days, we met.

Yardas: My recollection was it was a two-week period, that you started and went over a weekend, and then finished up, or something like that.

Chall: So the two of you met by yourselves? Where?

Graff: Yes. David snuck in a time or two when the meetings were here. Dennis DeCuir, Stuart's partner, who also represents public power interests, he joined us briefly for part of one of the meetings up in Stuart's office. But basically, it was the two of us. I was consulting with David when Somach wasn't in the room, but it was pretty much the two of us.

Chall: And how did you work? How did all this come about? I know what came about, but how did whatever we have here, this draft come about?

Graff: The June 15 draft?

Chall: Yes. You really gave a lot, I guess; he gave a lot.



Graff: Well, in terms of the personal dynamics, we had been co-counsel on the same side of the case of EDF against East Bay MUD, where Somach represented the County of Sacramento, and we were both resisting the efforts of East Bay MUD to divert a supplemental water supply from the American River. During the course of that case, which lasted a long time--there were lengthy proceedings both before the State Water Resources Control Board and before a superior court judge here in Alameda County, although I didn't participate actively in the latter one; I was involved tangentially. During the course of this litigation I got to know Stuart well and in the collegial situation where we were on the same side, as opposed to opposing sides. I always liked him, and was comfortable being as honest as one can be in terms of what's really essential from my point of view, and to the extent I could identify, from the point of view of others on our side of the fence. And I think he had the same approach, coming at it from the point of view of representing the CVP growers.

I think ultimately, both of us had fractious coalitions, but his was more fractious than ours. So he had more difficulty, because there were very different interests between the Friant people and the Westside people and the Sac Valley people, not to speak of other agricultural interests not part of the CVP, whereas the difference between duck people and fish people and rec reform and water transfers--there were tensions within our community as well, not to speak of hard-line or soft, and compromisers, on both sides. But we tried to do our best, I think, to acknowledge all those conflicting currents on both sides and come up with a package that tried to bridge gaps.

For example, on the San Joaquin River, the NRDC litigation was very active around that time on the question of contract renewal for Friant contractors, and would it include water for the San Joaquin River or not? Finding a middle ground on that was very difficult. NRDC was looking over my shoulder, and the Friant contractors were looking over his shoulder, and they were in court.

Chall: So you didn't--

Graff: So we came up with the idea of a study instead of a decision, and a surcharge, the four-dollar-an-acre-foot surcharge for Friant contractors, above the six and twelve that all the other contractors would pay, and they would pay as well, as a compromise position. And neither the Friant contractors nor NRDC liked what we came up with.



### Compromise Positions on Each Side

Chall: Was there a central outcome, central concepts that by now you all had on your side that you wouldn't--in the words of Newt Gingrich --you would cooperate but not compromise on?

Graff: Yes, I think from our point of view, there were two crucial elements to that discussion, from our point of view, and maybe from Somach's. From our point of view, we needed to have water or money, or some combination of both, that that was what was missing from the House Democrats' compromise. From Somach's point of view, he needed to have more certainty of outcome, limitation of liability from their point of view, than the House Democrats' compromise had, in the sense that all their water could be taken away by a secretary of the Interior who thought, I have to give it to the environment, or none. So those were--you know--our specific concerns.

More specificity in water and money terms for us meant, from my point of view, I could afford to give more certainty and limited liability to him. Then we had to craft language to fit those competing perspectives.

### Factoring in the Urban Interests: The Metropolitan Water District

Graff: We had the advantage, which in retrospect, as I look back on it, was also mentioned in my original memo to Beard and Lawrence in February, that it was really the first time that the environmental and agricultural negotiators, or constituencies, were together with the urban constituency not there. That had also never been true in the Three-Way Process. The urbans had generally always played the fulcrum role, the intermediary between the agricultural and environmental communities. And one of the outcomes of that was that the urbans didn't come out as well in Somach-Graff.

Chall: That's why MWD opposed it?

Graff: Yes. And I looked over this in preparation for our little interview here, and probably the biggest single mistake I made, or we made, but I made--"we" being Somach and I--was overstepping how much we were going to take, how much financing we were going to extract from the urban sector as part of the compromise. I finally figured out, I've always thought I was just stupid, which

I was, in overreaching, but I finally remembered, which I had forgotten, what little rationale I had for this.

The concept was, fifty dollars per resident, as an access charge for any new area that wanted to buy into the CVP. So there was a sort of one-time charge. You haven't been in the CVP, you now, in order to be part of the CVP, you have to pay fifty dollars a resident. And MWD, having whatever they have down there, 14 million people, thought that was a little excessive.

Chall: Oh, I see. That was part of the draft?

Graff: Yes. And now it sort of came to me that--I had been struggling all year, as is evident from reading the memo to Beard and Lawrence, and then the later memo in April, with a formula that would somehow get more resources from the urban sector, because it always seemed to me that taxpayers only had so much money, and the ag people didn't have that much money, so that something substantial was going to have to come from the urban folks.

And yet, what I also realized was--one of the other goals--a hidden goal--was breaking up the MWD. One of the problems with the water market in California is that there's one buyer. I mean, that's an exaggeration, but in terms of the urban sector, there's one monolith that dominates the water purchasing side of the equation. And it seemed to me that the fifty-dollar-per-resident, if that had stuck, would have caused individual sectors in MWD, who wanted to expand, to go off on their own and buy the water for themselves as a smaller entity, rather than buying it for all of southern California and having the wholesaler dominate the whole deal.

Looking backwards, Zach Willey and I had tried to get the city of Los Angeles interested in water marketing as part of the solution to the Mono Lake controversy. Generally I'd always argued with Boronkay and others at MWD that this wasn't a good market, because there was only one buyer--they were too big. And anyway, they had too much power. So as a post-hoc rationalization, but I think probably somewhat related to what was in my mind at the time, this fifty-dollar-a-resident access fee could be justified as a point of pressure to get them to have their individual areas compete in a market rather than have MWD be the sole buyer.

Having said all that, it was still a stupid idea, even if that was what the idea was. I can't vouch exactly that it was the idea. I think it was. Because it wasn't going to stick. And I just didn't give enough thought to how large a number that would be.

Somach didn't care. He was paying a lot less attention to that than he was to other things that were more crucial to his constituents. So we ended up with an immediate set of critics.

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Graff: Bill Kahrl attacked it on behalf of poor old MWD, which is ironic, because in most of his other editorials over the years, he's railed against the evil monsters from the south.

But anyway, so that was part of the package, and I regret that, not just because it was overreaching and too large a number, but because it was a missed opportunity. If I had been more thoughtful about it and had come up with a better formula, I think we could have perhaps ended up with a larger financial contribution from MWD as part of the deal. They got a good deal; they got access to this project of 7 million acre-feet. They still haven't got much out of it, actually, but eventually they will, and that was worth a whole lot to them, and somehow, we should have figured out a way to make them pay for that.

Yardas: We will.

#### Releasing the Draft: The Aftermath

Chall: Do you think that it fell down because of MWD's opposition?

Graff: Oh, no, it didn't fall down. The good side of it is--

Chall: A lot of it is in the final bill.

Graff: Yes, that's right. Well, the story, I'm sure you know, is we arranged this as part of our negotiation--in addition to hammering out a negotiated draft, we also tried to figure out how were we going to spring it on the world; what we were going to do. We had agreed with each other that we were not going to circulate drafts. It was just going to be the two of us, and then other people could react. We would take responsibility, but we weren't--Share the Water was not committed to supporting what I did, nor was the CVPWA committed to what Somach was doing.

And the way we decided was to release it on Monday, the fifteenth of June, as we both got on airplanes to fly to Washington to present it the next day [Tuesday] to people in Washington. Basically the House staff was going to sponsor a joint presentation. David went back with me, and I guess it was,

what, early in the morning, right? Like at six-thirty a.m. I said, "We ought to call Somach and see what's up."

So I called him in his hotel room, and he was very chagrined, and informed us what had occurred when he had arrived in Washington late the night before, having flown in from Sacramento. He had called a group of CVPWA representatives who had convened I guess in Los Banos, I think, to review the draft. After a long call to that group on Monday night, he was instructed not to appear at the briefing the next day. The main reason for that was that one of the big growers in the group, Mark Borba, who has a big ranch in Westlands, had called Governor Wilson that day--and then this gets fuzzy exactly who said what to whom, but it was reported that Governor Wilson said to Borba, who said to the group, "The governor instructed me to tell you not to let Somach go into that briefing the next day." And that's the way it was reported in the press within the next few days.

I've always thought it was probably a little more complicated than that, because Diane Rathman, who was the lawyer principally representing the Westside interests, left that meeting in Los Banos as it was going on, and presumably after Borba had made his statement, or maybe not, I don't know, actually drove to San Francisco Airport and got on an airplane to come back to attend the briefing.

Chall: Did she attend it?

Graff: No. Well, no, she didn't come to the briefing. She didn't know that they were going to pull Somach from the briefing at the time she left the meeting in Los Banos to catch the red-eye flight. And one of the silver linings of all this was that Diane Rathman wasted a trip to Washington. [laughing]

Chall: Well, you were there. So you went into--

Graff: Well, then I ended up having to debrief--

Chall: Who were you briefing?

Graff: It was Beard and Lawrence, from Miller's office, both attended, as did representatives from Fazio and Dooley and Lehman's offices, and perhaps others, but I know all four of those offices were represented.

Chall: But no senators?

Graff: No senators, no Senate staff. Although I went over to see Jensen and talked to him later in the day.

Chall: And?

Graff: And Beard and Lawrence took the occasion to--particularly Lawrence, but both--to berate me for all the compromises that I had made. I mean, part of it was fair game, with my having berated them over the years for all the compromises they had made, they finally could turn the tables on Congressman Graff here doing his thing.

Yardas: Well, they were smarting from the--

Chall: Were you there too?

Yardas: Yes. They were, I think, smarting, and it played out in a couple of ways. The historic compromise that they negotiated with the Valley Democrats they did more or less behind closed doors. I remember having a conference call with Share the Water people here, and them briefing us on the deal they had gotten. We were pretty merciless on some of the decisions they had made, so I think this was in a way payback time.

Chall: I see. [laughs]

#### Analyzing Some Specific Provisions in the Draft

Graff: And they were skeptical, as I think I mentioned earlier, about some of the specific provisions. They were incredulous that Somach had agreed to the six-dollar-an-acre-foot charge for CVPWA ag contractors. Seymour at some point had conceded to a one-dollar-a-foot charge, and that was viewed as a huge increase, far beyond what I think they ever thought they could get. And in fact, it stuck, and it ended up in the final bill. They also didn't believe the one and a half times O&M [operation and maintenance] charge, surcharge, as a means to get contractors to start paying immediately rather than waiting for contract renewal, would be effective. I in fact don't know when that--I guess that didn't make it in the final draft.

Yardas: What?

Graff: The one and a half times surcharge? It's in the final bill? I guess it is.

Yardas: That's my recollection.



Graff: So those were specific provisions that they critiqued that day, as well as the tiered pricing provision.

Chall: But the tiered pricing provisions had been throughout all of your bills, hadn't they? What did you do, change the--?

Yardas: They showed up for the first time in the discussion draft, the November 4 [S. 484] discussion draft. I'm pretty sure they arose --I remember Tom [Graff] at one time saying, with all the deference that he's given to the Yardas-Garrison letter, saying something like, "Well, that was a stupid formula anyway. It wouldn't work. We should do something with tiered pricing," and I think at that point we ginned up some ideas about how would you do tiered pricing. That first appeared, I was looking back here, in the November 4 draft.

What Somach-Graff did was to articulate a different kind of formula that was essentially revenue-neutral. It would, rather than having everything increase over the current rates--the more water you use, the more you pay--it lowered the initial costs and increased the tail costs such that if you used the same amount of total water, you would end up paying the same amount. That's my recollection of that formula.

They didn't care for that formula very much, but Somach did agree to it.

Graff: Another aspect of Somach-Graff that I'm proud of, and I think Stuart probably was at the time, anyway--it wasn't all just compromising. It was trying to dream up more creative ways of getting to results that would be acceptable or even positive for both constituencies, was the idea of a comprehensive EIS. There had been EIS provisions previously in both the environmentalist versions, to make sure the contract renewals were subject to an EIS, and Somach came up with the idea of, "Well, we need to have an EIS on the environmental part, and the anadromous fish doubling plan and the refuge water provisions."

And we both--I can't remember whose, whether the light bulb first went on in his head or mine, but I think we both sort of realized--neither of us is a big EIS enthusiast, but if we're going to do one, let's do a programmatic, comprehensive EIS that covers the whole waterfront. I remember we had a discussion where we were brainstorming rather than fighting with each other over should it be three years or five years or one year or whatever, and we came up with three years.

[door opens]

There is Mr. Jensen. [tape interruption] [Brief conversation ensues among Yardas, Graff, and Chall with Tom Jensen. Jensen leaves and interview continues.]

Graff: Well, just to continue then with Somach-Graff, I think we were talking about the comprehensive EIS--

Chall: Yes.

Graff: And some of the items on which Beard and Lawrence were originally critical but ended up in the bill. One of the areas I gave ground on was length of renewals, and basically mandatory renewals of twenty-five years. That was an area where EDF's views may have diverged some from the environmental constituencies generally, because our view was marketing was going to be most effective if there was certainty in the contracts. So we were, and I think I personally and EDF, were willing to give more ground on contract renewal and certainty of water, what water was tradeable, as part of what we saw as ultimately being a transfer scheme.

The ideas of limiting how much water could be reallocated through congressional or regulatory action, or action of the secretary, and trying to minimize the amount of impacts on contractors, which were supposedly concessions on our part, I thought were more than offset by the size of the Restoration Fund being set at \$120 million.

Chall: What was your change on contract renewal?

Graff: Twenty-five years, with an option for successive twenty-five year renewals, although Congress could intervene after the first one, or presumably thereafter, if it wanted to, but it had to affirmatively act.

Chall: And change it to something like forever?

Graff: Well, or it could stop, it could terminate some.

Chall: I think Kahrl feels that you gave it to them forever, or some such thing.

Graff: Yes. As far as I was concerned, that's inaccurate from a legal perspective, but the idea was to give them longterm assurance of water supply. Because Somach was called off by his constituency, we never really had to see what environmentalists as a whole thought of Somach-Graff. There were sort of embarrassing meetings. I wasn't really embarrassed, but I think Barry and maybe some of the others in the environmental coalition were. When I came back from Washington a few days later. Share the Water

met, but we never really tackled the question of what did Share the Water think of Somach-Graff.

Chall: Barry said that he was preparing a critique, but they didn't finish it because they didn't need to.

Graff: Yes. I guess the next Share the Water meeting was Monday, July 6. What happened actually was after Somach-Graff was aborted--

### H.R. 5099 Passes the House by Voice Vote

Yardas: Well, the House passed its bill.

Graff: Yes, that's right. Somach-Graff was on--I flew on Monday, we met in the briefing on Tuesday, an EDF staff retreat began on Thursday, and that Thursday morning, the eighteenth, was when the House debate took place on the bill. Miller decided to move the bill, and anyone who's listening to this oral history tape later or reading the transcript, whatever they do, should go read the *Congressional Record* for that day. Because it was a fascinating debate, which we got to listen to because we were getting ready to go to the EDF staff retreat, which was in Maryland, near D.C.

Yardas: You got to listen to it.

Graff: Or I got to listen to it. Where were you?

Yardas: [Sam] Gejdenson's office.

Graff: Oh, you were still working on the tiered pricing provision as the debate was going on.

Chall: I have in my chronology that on June 18 5099 passed the House on a voice vote. That's what you're talking about?

Graff: Right, that was the debate.

The funny thing about it was, this was about the time that we were most antagonistic to Fazio because of his Auburn stuff. He's on the floor of the House praising me and Somach for our efforts, and denouncing the governor for having intervened and making further negotiations difficult, and having to acquiesce in Miller's moving the bill, because his side had prevented something better, from his point of view, from taking place. So he and Dooley and Lehman all spoke, and all said, "Isn't it too bad negotiations have broken off, it would have been much better to go

that way, but given that they haven't, what can we do, Congressman Miller is moving his bill."

Chall: So they voted--

Graff: They didn't vote; it was a voice vote. But they expressed opposition, but they said, "What could we do, because it's the governor's fault," basically was the way they portrayed it.

Chall: Did it pass as it had originally been written, without the compromises in there that he had made?

Graff: No, no, the House Democrats' compromise is what passed, with two sets of additions. One being some merchant marine committee amendments. It was a joint referral to the merchant marine committee, and they added some provisions. Then David was back as well with me, and he was working with Congressman Gejdenson, who is famous currently for his four-vote victory in the 1994 election, the closest House vote--

Chall: Oh, is that right?

Graff: In fact, it was in the paper this morning, and there will probably be a big, continuing battle over it.

#### The Tiered Pricing Amendment

Graff: He did the tiered pricing amendment, with David's help.

Chall: You were saying something about the tiered pricing provision having first come up in November?

Yardas: Well, it first appeared then, but it got stripped out of the historic compromise for a day. Then, when the Valley Dems backed away from that, Miller decided to--and Somach-Graff collapsed, it was like, "Let's go to the floor and get this done."

Chall: What about Jensen?

Yardas: I'm not quite sure how it happened, but I was back there, we had the staff retreat coming up, and I don't remember--I think I must have been over on the Senate side, but I got a phone call saying, "Come over to the House side." I sat down at John Lawrence's request, and these guys were huddled trying to get things ready to move. They said, "Gejdenson wants to help, go to his office," which I did. He was intrigued with this tiered pricing stuff, and

he grilled me for about twenty minutes about what this would do, and could he--what implications and impacts would it have. He's a smart guy, and really put me on the spot, saying things like, "Okay, and I'm coming back to you personally if this isn't--" [laughter]

So I worked with his aides for a couple of hours getting some stuff together, doing some analysis to answer some of his questions, whatever, and then he ended up going to the floor with it, and it passed as an amendment to the bill.

Chall: I didn't know quite why he had gotten into it, but I knew that he had.

Yardas: Yes. I just think he wanted to help, and this was a place where some fiscal integrity could be brought into play, and we could make good arguments about it in terms of water conservation and helping fund the program, and recouping some of the historic subsidies, and whatever. There's a lot to speak for it. So it was great; it was a lot of fun. But as a consequence, I missed much of the floor debate Tom just talked about. [laughs]

Graff: It was funny, when Fazio came up to me, I was sitting up in the gallery. He came up, up to the higher floor, came up to me and shook my hand and said, "I appreciate what you've tried to do, and we'll try and keep working on it." That was a personal element of that particular effort. And you know, you're sitting there in the halls of Congress, with the majesty of the Capitol and all that. It was pretty exciting.

#### Further Negotiations on the Somach-Graff Draft

Graff: Well, just to finish the Somach-Graff sequence: the governor got all this bad press about having undermined the compromise. His own environmental people were telling him he'd made a big mistake. I believe Senator Seymour told him he'd made a mistake. I don't know that, but I think so. A lot of people started having second thoughts.

So he changed his mind, about ten days later. The word came down that, "Well, Somach and Graff really ought to start working together again."

Chall: Oh, really?



Graff: It had sort of a face-saving element to it being, "Now, you have to incorporate the other constituencies who weren't present." So we then had a series of meetings with the urban interests, including not just MWD, Boronkay came, but Contra Costa and Santa Clara, and I can't remember, the city of Sacramento I think were also there. We had a meeting with [Dave] Schuster, we had a meeting--I can't remember--with the power interests, public power interests. We had a series of meetings where people asked us questions and we discussed the draft.

There were some who thought we should revise Somach-Graff based on these meetings, come up with a new version, and neither of us had stomach for that. We put out another memo in July. I can't remember exactly what it said, but it was sort of a status report saying that we had met with so-and-so and so-and-so and so-and-so, and wasn't that nice?

Chall: Was there cooperation among all the others who came in to work with you on this?

Graff: Yes. See, the Somach-Graff draft was not a complete bill. There were several places where we said others had more competence or more involvement or more at stake than either of us did, that really needed work. Refuge provisions was one of those areas; water conservation provisions was another. I can't remember them all; there were three or four of them. We didn't really agree on the length of time for the [anadromous fish] doubling period, the period of time over which you'd measure what had to be doubled, and things like that.

I can't remember the exact sequence, but those discussions started to take place. So there were parallel negotiations going on over that next month or so, among refuge people and among water conservation people. Ironically, the Friant people and the NRDC, no, I guess it was Ed Osann of the National Wildlife Federation, who now works for Beard, were the water conservation negotiators.

So there were a lot of parallel discussions going on, and I think to our credit, Somach's and mine, without patting ourselves on the back too much, we created at least an atmosphere where people were talking to each other again, and there were a lot of more or less fruitful discussions about various elements of the overall situation.

And it was in that time that [Mike] McGill came forward with his proposal, and as it turned out, mainly I think working with Somach behind the scenes, Fazio came up with his alternative, which surfaced early in August. Do you have a date on that?

Chall: It surfaced in August, according to Jensen's draft. No specific date.

Graff: Yes. But it must have been before the fourteenth--I don't know if his written one surfaced before the fourteenth, but you'll see--

I met with Fazio a day or two before that, or it might have been a few days before that. I was back in Washington--[looks through calendar] "D.C., tenth to the thirteenth," and I wrote the letters on the Friday. I actually wrote the letters on the plane, but they got typed up and mailed on the Friday. By then, Fazio either had--I didn't have stuff in writing, but he had a concept of what his proposal was going to be. That then sort of launched Miller and Bradley and others who were gathering for the [House-Senate] conference to respond to what Fazio had put on the table.

Chall: Yes, that's right. I have that somewhere between June and August --maybe that's from Jensen's list--that the conference committees of the House and the Senate were appointed. I have the Senate committee, but I don't know what the House committee was made up of. Do you have that?

Graff: Yes. The delegation to the conference in the House was massive. The reason being that for different provisions of the bill, there were different conferees. This was true both because it was the omnibus bill, but also just for the California provisions, the House Agriculture Committee, the House Merchant Marine and Fisheries Committee, as well as the House Natural Resources Committee, and maybe others--I can't remember if it was just the three--all had conferees. So the House conferees were this enormous group of about eighty people--

Chall: Oh, my.

Graff: And they're listed somewhere in the conference report, I think. I'm not sure of that.

Yardas: Yes, they're listed.

Graff: I can find out. When you start talking, or David starts talking about what all the bills were in the last month, I'll go looking for that.

Let me just say one other general area that I want to talk about, because I think that where we're going to end is with the final bill.

### The Influence of the Media

Graff: One area we haven't talked about at all but that was very significant throughout these two years, and I think arguably over the many years before that, was the media. We've done a lot of talking about Bill Kahrl. Bill Kahrl, I think, essentially stood alone. I can tick them off: The *L.A. Times*, the *New York Times*, the *Washington Post*, the *Wall Street Journal*, the *San Francisco Chronicle* and *Examiner*, the *San Jose Mercury*, the *San Diego Union*, all either editorially or on the op-ed pages or in their news columns or some combination of all those, columnists, in one way or another contributed to passing the bill. The press coverage was overwhelmingly favorable to our point of view. Among the more conservative commentators, the focus tended to be on the water marketing provisions; among some of the regional papers up here, on the fish and wildlife protection, Bay/Delta protection, and the like. And then among sort of the mainstream, that it was time for general reform--this was a reform effort.

So whether it was Jack Burby on the editorial page of the *L.A. Times*, or Peter Milius at the *Washington Post*, or Peter Passell, a columnist at the *New York Times*, Lou Cannon, a columnist at the *Washington Post*, Charlie McCoy, a local writer here for the *Wall Street Journal*, there was broad-based support. And the *Wall Street Journal*, although they didn't really editorialize on Miller-Bradley, over the years they had been supportive of water marketing certainly, and had run pieces favorable to EDF's approach. The *Chronicle* and *Examiner*, Eliot Diringer was a reporter here, Jim Mayer and Mike Doyle at the *Bee* are reporters in D.C., Scott Thurm and [Bert] Robinson of the *Merc* [San Jose Mercury]. A guy named Gogek at the *San Diego Union*. And there were many others. Even the *Orange County Register*, although they opposed the bill at the very end because it wasn't free market enough, I think.

We did a lot of work with the media, and I think that helped directly and indirectly.

Chall: Did you send op-ed pieces or call a press conference?

Graff: Yes. Share the Water did most of the press conference kind of stuff, and most of that was focused around impacts on the environment and on the fishermen, both sport and mainly commercial. We tended to work more on a one-to-one basis with individuals in the media. I personally had put a lot of time over many years into cultivating and establishing, cultivating relationships with all the different ones I could.

Chall: Did you call a reporter that you knew was working in this field?

Graff: Yes, all of them. I worked with the media a lot of the time. I put probably--while David was working some of the--

Chall: Technical--

Graff: --technical stuff, I tended to personally put a lot of time into the media side of it.

Chall: I know that when it came to starting my research, it was mostly just a pile of news clippings that I had.

Graff: Yes. Well, that was a major--it helped. I think it helped with the out-of-state people. They had some assurance. The *New York Times* and the *Post* and the *Journal* were saying this is good--*L.A. Times*. It's not just George Miller saying it's good, or Bill Bradley saying it's good. So that was just another element that we hadn't talked about.

Chall: Yes. I'm glad you brought it up.

Graff: That's one thing I've not had time to do, but there is--I just have immense clipping files. In fact, I need to organize them at some point.

Chall: I'm just so impressed with David's organization over here.

Yardas: It's the only thing I've done to organize everything, is to put the different versions [of the bills] in a binder.

Chall: It's terribly impressive.

Yardas: The rest of it is in two big piles on my office shelf which some day will get attention.

Chall: Very impressive.

Graff: So that's just the end of my story, so go ahead and--

Chall: Now let's get to the end here--

Graff: September, the end game.

The Conference Committees: Negotiations Involved in Drafting  
Title 34

Chall: The exciting end. The conference committees were appointed, and as far as you know, was there much jostling for positions on the Senate side?

Yardas: I don't really know much about the membership issues there and how that came into play. The one thing that was clear is that Miller and Johnston controlled the conference. They controlled the agenda, and when it would meet. In fact, it only met once, the original convening--

Chall: Yes, so I realized.

Yardas: So exactly what kind of jostling and jockeying went on in terms of who would be on, I just don't know.

Chall: Now, they did get organized, and then sometime in August, Fazio came in with his draft. Gave it to whom?

Yardas: Well, sometime in August, Fazio wrote a long letter to Barry Nelson, responding to Share the Water criticisms and more or less outlining what he (Fazio) could support. Then I have here a legislative draft dated September 9, 1992, and a note on it that says it was distributed 9/14/92. Now, that doesn't mean there were not discussions going on at staff level, but in terms of an actual draft that was put out for consideration by others, I don't think that officially appeared until shortly before the conference convened.

Chall: And that was his own draft that he--was it under his name?

Yardas: Well, here's what it looks like. It doesn't have any name or title on it at all.

Chall: Just a typewritten--

Yardas: But that's in fact where it came from.

Chall: I see. And he gave it to whom?

Yardas: I don't know how broadly it was distributed. Obviously I think it went to key players, and certainly to the various staff--

Chall: On both sides?



Yardas: Yes. But this was before the conference was convened, and upon the convening of the conference, Miller put a bill into play.

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Yardas: When did the conference convene, on the fifteenth, I believe?

Chall: I have the fifteenth.

Yardas: So my sense from my notes here is that there was a scramble to get something out before, pseudo-officially before the conference convened, but in fact, what Miller put into play was Miller's work with some consultations with the Senate side and background work. I was involved to some degree on creating an offer to the conference.

Chall: So that would have been something other than 5099? Totally new?

Yardas: Well, it was sort of--I think it was a mixture of a lot of different things. Basically, they created a new bill which attempted to address some of the deficiencies and criticisms that they had gotten in the House conferees version, picked up some of the stuff that had been done in Somach-Graff that they liked. For example, the House-passed bill--not the compromise bill, but the one that was finally passed--included a couple of significant amendments, as Tom mentioned, from the merchant marine committee.

One of those said something like, "Upon enactment of this act, and after implementing certain operational changes, the secretary may make available project water for the primary purpose of implementing its fish, wildlife, and habitat restoration purposes and measures, except that such water shall be in addition to water that's provided for refuges and for the Trinity River. This water may be assigned immediately to supplement in-stream flows, and the Fish and Wildlife Service shall conduct studies and monitoring necessary to determine how it will work."

So there was a new section, that was not something that was agreed to by the Valley Democrats that was put into the conference offer at the request of merchant marine, which once again introduced an unbounded liability, in a sense.

Miller's offer to the conference also used the chairman's mark formula, but went to a million acre-feet, down from 1.5 million. Fazio's draft--

Chall: Was 800,000 acre-feet.

Yardas: Well, the original draft that I have here actually said, "Unallocated yield," with a certain definition, "plus up to 700,000 acre-feet of other water." So there was sort of a lot of movement going on--

Chall: Yes, a lot of trading-off opportunities.

Yardas: Yes, a huge amount. And the farther we go into the process, the less and less I was involved directly, with one exception, in what was actually going on. Things got sort of more secretive, higher level negotiations. But I think it's important to note that the Miller offer to the conference was a million acre-foot bill and a \$50 million Restoration Fund. And I believe that Fazio's offer was, as I said, essentially 700,000 acre-feet plus any unallocated yield, if any, that existed. And I think it was a \$30 million Restoration Fund.

Graff: By the way, one thing that I gave you but that I didn't mention explicitly, I think on the record anyway, was that along the way, we got a couple of Dave Schuster's memos, one of them being a critique of Somach-Graff. The other one was a critique of Fazio's proposal. Supposedly his friend. And in both, he uses quite intemperate language to criticize efforts to reach common ground. Which in a way is too bad. Schuster has come around again somewhat since. I think he was distressed, is my personal view, at having been a central player in the contractors' original draft, and then kind of fading as a key player from then on, until he became an outside critic. And for those who are trying to make sense of it in the future, some of his criticisms, I suppose, are valid. But they're interesting to read, anyway. Those are private memoranda that somehow came to our hands, so they were kind of interesting.

Chall: It's all part of the story.

Graff: Since his stuff is going to be sealed for a while, we're going to have to go on what he put to paper.

Yardas: So anyway, Miller's offer to the conference set in motion a flurry of kind of activity over the next several weeks.

Chall: The House and Senate conference committee met once? That was September 15?

Yardas: It was the Conference Committee, yes, and upon convening the conference, Chairman Miller put into play a document which was effectively a chairman's mark, a chairman's offer. I don't quite understand the rules, but for whatever reason, it was Miller's

move to make the first move, maybe because H.R. 429 originated in the House, but all legislation originates in the House and then--

Graff: No, not all. Only appropriations bills always do.

Chall: Unless it was just a courtesy.

Yardas: That's right. In any case, he had the gavel, and he made the first move and set the tone of the debate. Everything after that was really horsetrading. If you ever get a chance to talk with Tom Jensen at length about this, I know that he was getting a large number of what he described as "Gwinn-grams." Roger Gwinn, who was Vic Fazio's chief staffer on this issue, was in constant contact with Jensen over the ensuing several weeks, because basically the Senate had to respond to the House offer in the conference. The Senate had to respond with a counter-offer. Either accept what the House had offered or push back.

So there was this behind-the-scenes work with Fazio's staff basically talking to the Senate and saying, "If you can give us this, that will help a lot. And well, just one more thing. Oh, yes, well there's just one more thing," and this went on for quite some time.

Chall: As Peltier says, it was a sausage-making enterprise.

Yardas: Well, all legislation has been characterized that way. I suppose it's a matter of degree.

Chall: Except there was never anything whole in any bill that was really being discussed here. There was Miller's draft, the mark or whatever it was that came in. I always assumed that conferences worked together, sat at a table and worked on the changes. But I understand from Barry Nelson that that didn't happen with this one. Maybe it doesn't, ever.

Graff: I think generally speaking, these things, with maybe a couple of exceptions, get hammered out by staff. Maybe there's one or two big issues where the conferees clash and they work it out. But I actually think that, although it's kind of a herky-jerky process, taking it over the course of two years, a lot of the concepts got hashed out pretty heavily by a lot of different people from a lot of different perspectives, and what came out is a compilation of a lot of different people's points of view. So it's pretty good sausage if it's sausage at all.

Chall: It isn't something that just was never there?

Yardas: No. There's nothing--

Chall: Everything had already been considered.

Yardas: Well, there were, as ever, many questions: how much "up front" water and how did that relate to this sort of unbounded liability, and was one constrained by the other? What size of fund? Was there an oversight mechanism or a trust or not? Was there an appropriations mechanism, the triggering mechanism for collection of charges? Whether or not escalation rates were part of the charges or not--those sorts of deals were part of the end game negotiations. But I don't think at that point there were new ideas coming into play. It was really kind of a packaging question.

And, I don't know. Jason will probably say he wasn't involved and didn't know what was going on, but I don't believe that that's true. At least indirectly, I know that there were intense negotiations that went on right at the very end. For example, over the San Joaquin River provisions and what those would look like. We were called in by Miller in part because of what had gone on with the historic compromise--

Chall: What compromise?

Yardas: The historic compromise.

Graff: We use that term because that's what the newspapers called it.

Chall: Right, I know what you mean. Before we get into final passage could you tell me if groundwater management was ever considered in any of the reform bills and what became of the provision?

Graff: No real groundwater management proposal ever was part of any of the bills. It was just one reform too many, I guess. Also, it really is a state matter. It's not a problem by any means limited to the CVP service area.

### The Final Hours Preparing the Bill

Yardas: Back to the final bill. In part because of what had gone on with the so-called historic compromise, I think that when it got down to the eleventh hour--one of the things that the environmental community was extremely upset about was the way that the San Joaquin River had essentially been written off or sacrificed as part of the compromise, at least in our reading of it. Somach-Graff articulated the idea of a study and additional charges imposed upon Friant division contractors until such time as water

was put back into the river. The final negotiations really were over some of the details of that provision. For example, that's when the words "reasonable, prudent, and feasible" showed up.

Those negotiations were formally between Beard and Jensen. Well, that's not really accurate. They were conducting negotiations by telephone at this point. I was over in a room next to the House committee staff offices, along with Barry Nelson of Share the Water and David Behar, who had been the early, I guess, convener of Share the Water with the Bay Institute. The three of us were kind of the sounding board. Beard would come out, and Lawrence was there, and Miller was there from time to time. This was like two in the morning or something on the final day, asking us, "What do you think of this?" And then Beard would call Jensen back.

Jensen, meanwhile, was negotiating--I think--with Wallop's staff, and they were probably talking with Somach, who was probably talking with Peltier. So this thing-- Meanwhile, we're making calls back East late at night, checking in with people, so I don't know how--

Graff: Back West.

Yardas: Yes, back West. --how far the net went, but there was involvement and consultation by a lot of different people. You hear that now, because everyone in these public meetings says, "Well, I was involved in writing that provision, and I know." [laughter] So there's a lot of authors, or none, depending on where you are.

Chall: Well, there were a lot of conference calls in those days.

Yardas: Absolutely.

Chall: Where in all these last negotiations were Senator Johnston and/or his staff?

Yardas: I don't know about Senator Johnston, I personally was over on the House side, but I do know that Jensen was on point as Senate Energy Committee counsel, and in close contact with Senator Bradley throughout.

Chall: Peltier has discussed conference calls, whether they were at that final stage or not I don't recall. I think he did feel that Fazio and Wallop were essential. Wallop I guess was coming to them and saying, "You've got to give up a certain amount of water." Which I guess they had to do. They felt that they were being squeezed out.



Yardas: Well, they always wanted to solve this problem with, as I said before, enough water to pour the cement but no more. From day one, they knew that that was not going to fly with us. A lot of this debate was trying to come up with some kind of formula that would actually provide some, what we called "upfront" water to fish and wildlife. The idea was, if you wanted to get beyond the trouble we were having, you first had to stop the hemorrhaging. And even if you thought that the structural measures were the be-all and end-all, those were going to take years to put into place.

So the only thing you could do right off the top was to improve the in-stream habitat conditions, and that would mean some water when it was needed. The CVP is overcommitted, so there was really only one way to get there--one substantive way, and a lot of different formulas about how to try and make that happen.

Anyway, those negotiations is where the million that Miller put into play ended up being reduced to 800,000. We were not able to increase the money above the \$50 million that was originally put in, although that \$50 million was better than anything that we'd achieved until that date, with the exception of the Somach-Graff proposal.

So I'm not quite sure what else to say about the final product. I remember one other event that was a Share the Water event, where we were all--we met at EDF in D.C., and you [Tom] were on a conference call that we had. I'm trying to remember whether we were discussing the Miller proposal at that time, or a pending conference offer, I don't remember what the--

Graff: Yes. I don't remember details. I remember getting calls from you about, "Should we give ground on this little bit of language or that--what about the cutback to 600,000 acre-feet in dry years?" Those kinds of questions. Mostly I think I said, "You're there, you make the judgments." I remember feeling somewhat detached because I was here, and I'd had my day in the sun in June and in July. I was sort of happy not to be back there, and letting you work on the final bill.

Yardas: This was a period when I went back for a four- or five-day trip; we've done a lot of those. I think I had actually scheduled two trips back or something during that last month, but ended up staying for a little more than three weeks solid, just luckily had friends who I could stay with back there, because our travel budget was gone by then.

Chall: So this was all going on between September and October?

Yardas: Between September 15 and October 3. I believe October 3 was the final--I don't know when the final vote was. I actually then came back here before they had finished all of the parliamentary stuff, and a few other modest changes, as I recall, did take place thereafter. But the essential deal was cut late in the evening on October 3. That's when things got wound up.

### The Votes in the House and Senate

Chall: Were you generally satisfied with what came out?

Yardas: I was exhausted. [laughter] And I was in the worst mood. I was tired and cantankerous--

Chall: I don't know how people stand this, actually.

Yardas: Satisfied? Yes. It was--

Chall: Quite an achievement.

Yardas: We still had to get through--we weren't really satisfied until we had a signature. And there's more to that story as well. But no, of course. And we still had, even when we'd reached this agreement in the conference, then we still had to go back and vote in the respective houses. And there was Seymour's filibuster and whatnot.

Graff: And there was sort of this mini-House filibuster, too, where the various California Democrats, including, among others, [Leon] Panetta and [Norman] Mineta, delayed a vote over the weekend.

Chall: I didn't know about that.

Graff: They were trying to stall, and make the bill die before the end of the session. Miller was putting the heat on to get the floor time and the vote. I'm sure there were lots of shenanigans, or not shenanigans but conversations between Miller and the House leadership about when the bill could be given the floor time. The longer it took in the House--this came up in the end of the session, just as in '94, when the Republicans managed to stymie almost everything using these kinds of delays, including House delays.

But the Seymour filibuster, as it turned out, was unsuccessful, and it was mainly I think because his Republican colleagues were not going to support him. They were going to

embarrass him even more by probably getting a cloture petition signed in twenty minutes.

Chall: They wanted a bill.

Graff: Well, A, they wanted the bill, but B, they wanted to get out of there and campaign. Jake Garn, as you know, had more chits among his colleagues to call in than Seymour did. And Wallop was helping Garn. He was trying to help the growers, but he was also helping Garn get a bill. And Wallop had some of his own provisions in there too.

Chall: That's right.

Graff: These are the conferees [shows Chall list of House conferees on the bill]. As you can see, there were many of them, for different titles, different conferees. They go on for a page and a half here.

Chall: Okay.

President Bush Signs H.R. 429, the Reclamation Projects  
Authorization Act of 1992: The Omnibus Water Bill

Graff: One other thing: I don't know if we need more on the September period, but in the efforts to get the president to sign the bill, aside from the other western states wanting the bill passed, my view is that the key lobbying support came from the business community. There was apparently a board meeting of Transamerica that included such notables as Peter Ueberroth and Condoleeza Rice and I'm not sure who else, but they broke from the board meeting, or interrupted the board meeting, and all got on telephones and called Jim Baker and Richard Darman and Bob Grady in OMB [Office of Management and Budget], and said, "This is a bill that the president should sign." That's not ever been reported, to my knowledge.

Chall: No.

Graff: But it was not just that the president thought, "Yeah, this will help me in the other western states, and I've lost California," which is the common explanation. I think it was also that.

On the other hand, Governor Wilson did his very utmost to get the president to veto, including, the story goes, twice flying

East to meet with him to persuade him to veto it, and not getting a meeting. Once to Washington, once to Tennessee.

Chall: And he didn't get a meeting?

Graff: That's the scuttlebutt. Whether that's true or not, I don't know. He eventually got a phone call.

Yardas: I have to go. I had scheduled a one o'clock meeting.

Chall: Oh, it's already after one. Well, we'll just get the last here with the filibuster. Where were you?

Yardas: We were all back here at that point. I basically punched out. We did letter-writing, and there were a lot of questions from OMB that came over during that period, trying to put together the internal analyses that would make the case for the bill. We actually had a lot of sympathy from within the administration.

Graff: Yes, including OMB most particularly.

Chall: Really? That's Darman?

Graff: It was really Grady. Bob Grady was the deputy at OMB, and he's now an EDF board member.

Yardas: A lot of people thought that the formula we basically articulated was right. There was a lot of pressure on the president. But these were people who now were being asked to probably provide one- or two-page summary memos and give their advice or counsel on various aspects of the bill that they'd never looked at before, and there were two years of history behind all of it. So we spent a lot of time in that last month trying to explain our positions and why, and how this had come about, or respond to particular questions. I don't even remember all of that, other than that it went on. It seemed to go on for an endless period of time.

Graff: And the actual signing statement that Bush signed has caveats in it. I don't know if you know that.<sup>1</sup>

Chall: No, I haven't seen it.

Graff: That's worth having as part of the record. In fact, I can make a copy for you after we're done. I can't remember what they all were, but as part of the concession to the other side, the president tried to put his spin on what the bill meant.

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<sup>1</sup>See Appendix C.

Chall: [To Yardas] Thank you very much for your help.

Yardas: Oh, sure, my pleasure--thank you. I wish that I could have actually been a little more substantive in filling in the details.  
[Yardas leaves]

Chall: [tape interruption] I think we know what happened to get the president's signature. But you said you have his caveat?

Graff: Yes, the signing statement.

Chall: Have you any idea who were the eight people, aside from Seymour, who voted nay. It passed eighty-three to eight, and I've never been able to find out who the eight were. You might know.

Graff: Yes, I think it's just in the record here.

Chall: I'm sure it is. I just haven't gone through the record.

Graff: Does it say which day they voted?

Chall: It's October 8, I think.

Graff: Eighth is the Senate?

Chall: Yes.

Graff: Well, I'll look for it.<sup>1</sup>

### Analyzing the Viewpoints of the Agricultural Community Toward the Environmental Community

Chall: Now, it's been claimed that this was a violently, virulently anti-agricultural measure. Peltier feels that you all felt that agriculture was the enemy, and that your side was abusive. How do you respond to that?

Graff: I don't agree. On the substance of the bill I don't agree, and I don't even agree on the psychology. On the substance, I think, the right to transfer and the contract renewal provisions were major pluses from agriculture's point of view. This is a public resource, and over the course of the, what, fifty, sixty years

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<sup>1</sup>Hank Brown, William Cohen, Larry Craig, Nancy Kassebaum, Warren Rudman, John Seymour, Robert Smith, Strom Thurmond.



that the CVP has been either authorized or in existence, public attitudes towards how water should be managed and what the various purposes are that it should go to have changed. If one were starting totally new, I doubt if you would say 90-plus percent of the water in the CVP should go to agriculture, some of the uses of which are quite marginal economically, and only a fraction to urban and environment. And yet, major concessions were made to agriculture in this new, essential reauthorization of the CVP, where they still get most of the water at highly subsidized prices. They get the right to sell it, and they get it for a long period of time.

Now, true, they had to give up--some of it's going to eventually move out of agriculture into urban use or non-CVP service area use, and some of it was in different ways transferred to the environment, and it's going to cost more. But I think those were fair compromises, and agriculture came out well, when all is said and done.

In terms of the way the different interests perceive one another, as you'll see in some of the letters that I wrote, I tried, particularly in that last set of letters in August in communication with Miller in particular and others, to say, "We've got to live with these guys afterwards, as well as get the best possible bill while we're doing it. So there's some value in including them and not making it a roll-'em strategy," as the terminology in use at the time was. That's less Miller's style than it is my style, so he had to get the bill passed, and there was major opposition. People get angry at each other when that happens.

But we had a meeting here--this is late 1994--of what we now call the CVP Restoration Fund Roundtable. It includes agricultural interest, urban interests, power interests, business interests, environmental interests of various kinds, all of whom are trying to make the Restoration Fund and the monies work to the benefit of all. And Jason was there, and all the representatives of MWD were there, and representatives of various other constituencies were there, like the Sacramento Municipal Utilities District and the Bank of America. And we're all working together. Now, we're still fighting with each other on other fronts. The 800,000 acre-foot fishery allocation is a contentious issue, and so on.

But I guess--I don't know. I think that agriculture felt at the time quite beleaguered, and maybe still feels somewhat beleaguered. Maybe if you check in with me in two years, after the Gingrich revolution has taken its course, I'll feel beleaguered, I don't know. But on the whole, I would take issue

with Jason's characterization, although it's not totally wrong. A lot of harsh words were said and hard battles were fought. That's I guess the way this public policy world is--at least in America we don't kill each other over it. Mostly.

Chall: There is a perception, too, that you care--you, Graff, care more about marketing than about the environment.

Graff: I don't know. On a personal level, I've always thought marketing was a way to bridge gaps among these constituencies, both substantively and politically, and I've put a lot of energy and time into it, so I suppose I have sort of a personal affinity for the concept that goes beyond just kind of a rational approach. But both practically and morally, my job is to protect the environment. That's what the organization says I'm supposed to do, and marketing ultimately is a mechanism to help do that, not a goal.

What my real motives are, who knows? I don't even know.

#### An Optimistic View of the Future of the CVPIA

Chall: If the ESA is amended, and it could be amended this year or even wiped out, couldn't it? Endangered Species Act. What will that do to the CVPIA, or portions of it?

Graff: Well, I don't know. I don't think it would do much directly to the CVPIA. It might change somewhat practically how allocations get made in the project. One of the things we really haven't talked about that has transpired since the CVPIA passed are lawsuits to undo one or more of its provisions, and there are lawsuits now that are attacking both parts of the CVPIA and of the Endangered Species Act. How those will turn out is unclear. But I'm pretty much an optimist. One of the key elements of the CVPIA was to make the environment a CVP contractor in effect. I think grudgingly maybe, but increasingly, the more sensible representatives of CVP agriculture, of the other contractors, are accepting the environment as a part of doing business.

So even if Clinton and Dan Beard and others, who are perceived as sort of tilting to the environment, pass from the scene, as they will sooner or later, some of the change is structural, it's not just personalities. It isn't just that George Miller and Bill Bradley were in the right place at the right time, it's that public attitudes have changed.

Now, public attitudes could shift back. And maybe they have. Maybe property rights in some sense are more important than endangered species in many people's view. One thing I've always wondered about: whose property is water? That's a very complicated concept. The answer to that is very complicated. But maybe we'll need to wait for another interview some day to get into that whole area.

## TAPE GUIDE--Graff and Yaldas

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APPENDICES--Thomas J. Graff and David R. Yargas

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# ENVIRONMENTAL DEFENSE FUND

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September 6, 1990

Charlene Dougherty  
Subcommittee on Water, Power,  
and Offshore Energy Resources  
House Committee on Interior and Insular Affairs  
1522 Longworth Building  
Washington, D.C. 20515

Re: Contract Renewal Limitations, H.R. 3613

Dear Charlene:

This letter raises for discussion a set of possible alternatives to the Central Valley Project (CVP) contract renewal limitations currently set forth in H.R. 3613, the California Fish and Wildlife Protection Act of 1990. (See Interior Committee version dated July 25, 1990.) We offer this discussion for two principal reasons:

(1) The Act, as presently amended, may allow for increased CVP commitments (new contracts for allegedly unallocated yield) within three years of the date of enactment. Yet additional commitments would impact both existing water users and, to a much greater extent, the Central Valley's already-overburdened fish and wildlife resources. In our view, both common sense and sound public policy demand that (a) additional CVP commitments be avoided until the Act's goals and objectives have been met, and (b) future consumptive-use demands be satisfied through the reallocation of waters currently in use under both appropriative and contractual entitlements.

(2) Opponents of H.R. 3613 have expressed primary concern over the contract renewal limitation section. They claim, for example, that the current limitations might affect the ability of existing CVP contractors to secure long-term funding (loans) for needed infrastructure improvements. While such claims have yet to be substantiated, we are willing to explore alternative approaches as discussed below in order to broaden support for the Act and ensure its enactment for the protection and enhancement of fish and wildlife resources.

Taking these points into account, it is our belief that the Act can be strengthened, and the interests of fish, wildlife, and both existing and prospective CVP water users reconciled, if two major concepts are

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implemented. First, no new contracts for as-yet unallocated CVP supplies--even contracts limited to a single year in length--should be permitted until the Act's fish and wildlife objectives have been achieved. Second, future consumptive "needs" should be satisfied through voluntary reallocations under existing rights and contracts, with reallocation opportunities, ongoing renewal limitations, and associated concerns addressed at the time of contract renewal.

The following paragraphs provide a number of specific suggestions and amendments that would begin to implement the conceptual approach outlined above. We would emphasize that these suggestions should be read as a package of interlocking commitments: firm prohibitions against new CVP contracts are the foundation upon which all of these contract renewal alternatives depend. Absent such assurances, we would recommend a return to the Act's previous one-year limit on both new and renewed contracts until its substantive fish and wildlife objectives have been met.

**NEW CONTRACTS** In its present form, the language of subsection 406(a)(1) is somewhat ambiguous. At odds are (1) a one-year limitation on new contracts pending attainment of the Act's goals and objectives, and (2) the apparent release of that limitation only a year after the Commission on Central Valley Fish and Wildlife Restoration (section 301) has submitted its recommendations to the Congress (section 302). Because what ultimately matters is fulfillment of the Act's substantive requirements, and because of our concerns over increased CVP commitments, we recommend that section 406(a)(1) be re-written substantially as follows:

**Section 406(a)(1) NEW CONTRACTS.** The Secretary may not enter into any new repayment or water supply contract for the delivery of water from the Central Valley Project, nor enter into any new [Warren Act] contract for the use of Central Valley Project facilities, until the requirements of subsection 406(b) have been met; provided, that such restrictions shall not apply to new contracts which, in the opinion of the U.S. Fish and Wildlife Service, result in a significant increase in net fish and wildlife benefits in furtherance of the goals and objectives of this Act; and provided further that nothing in this Act is intended or shall be construed to preclude the Secretary from entering into new contracts for the marketing of unallocated water supplies of the Central Valley Project after the goals and objectives of this Act have been met.

(Note that this section also incorporates the provisions of section 409.)

**RENEWED CONTRACTS** If firm assurances prohibiting the marketing of unallocated CVP supplies were provided, a number of contract renewal limitation alternatives could be considered. These alternatives would be structured in such a way as to ensure attainment of the Act's fish and wildlife objectives, address the concerns of existing CVP water users, and

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facilitate voluntary reallocations to prospective CVP contractors. The following potential amendments, together with those offered for section 406(a)(1) above, would begin to meet these diverse objectives:

**Section 406(a)(2) RENEWED CONTRACTS.** The Secretary may not renew any existing repayment or water supply contract for the delivery of water from the Central Valley Project, nor renew any existing [Warren Act] contract for the use of Central Valley Project facilities, for any period over one year in duration until the requirements of subsection 406(b) have been met; provided, however, that the Secretary may enter into such renewal contracts for periods not to exceed ten years in length if the following terms and conditions have been met:

(A) At least ten percent of the water under the subject contract on the date of enactment of this Act, plus an additional one percent for each year or portion thereof that the renewal contract is extended beyond one year in length, is dedicated for use by the Secretary for fish and wildlife purposes in furtherance of the Act's goals and objectives;

(B) The renewal contract authorizes the subsequent transfer of contract water, whether by sale, lease, exchange, donation, or other means, to other CVP contractors, to fish and wildlife interests, and to other persons or entities who are or may be authorized to use CVP water for existing Project purposes or for the [amended] purposes authorized in Section 405 of this Act; provided, that the renewal contract further provides that no transfers shall be made in excess of the average annual quantity of CVP water actually delivered to the contracting district or agency between 1981 and the date of enactment of this Act;

(C) The renewal contract authorizes individual sub-contractors or water users within the contracting district or agency to act as their own agents in effecting transfers to entities outside district or agency boundaries, and further provides that a proposed transfer by such subcontractor or water user shall be viewed as "mutually satisfactory" in accordance with the provisions of California Water Code Section 383(c), if:

(i) costs to the district or agency, or to other subcontractors or water users within the boundaries of the district or agency, do not increase as a consequence of the transfer; and

(ii) the sub-contractor or water user agrees to forgo an equivalent amount of Project water deliveries, including conveyance losses, to which it would otherwise have been entitled throughout the term of the transfer;



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(D) The contracting district or agency commits to the installation of volumetric water meters on all existing irrigation groundwater pumps within its boundaries within five years of the date of contract renewal, and on any new irrigation groundwater pump installed within its boundaries on or after the date of contract renewal; and

(E) The contracting district or agency:

(i) has demonstrated its authority, or has joined an appropriate regional entity which has the authority, to undertake such actions as may be needed to ensure that surface and subsurface agricultural drainage discharges generated within its boundaries meet all applicable state and federal water quality objectives and standards; and

(ii) commits to a program, on its own or as a member of an appropriate regional entity, through which surface and subsurface agricultural drainage discharges generated within its boundaries will meet all applicable state and federal water quality objectives and standards.

The renewal contract shall also specify that if the district, agency, or appropriate regional entity fails to meet all of the commitments specified under subsection (ii) of this section at anytime during the contract renewal period, the renewal contract shall terminate at the end of that year and shall not again be renewed for periods of more than one year in duration until the district, agency, or appropriate regional entity can demonstrate that such commitments have been, are being, and will continue to be met. The provisions of this subsection shall be in addition to any and all requirements, remedies, and sanctions which are otherwise provided under state and federal law.

In exercising his discretion under Section 202(d)(3), the Secretary shall take into account the extent to which the provisions of subsections (A) through (E) of this section have been met.

**OTHER PROVISIONS** In order to increase the effectiveness of the above suggestions, and to further ensure attainment of its fish and wildlife objectives, we also recommend that the Act be amended to:

o require water conservation and water management improvements substantially in accordance with amendments to Section 401 as suggested by the National Wildlife Federation by letter of July 17, 1990 and as summarized by attachment to this letter;

Charlene Dougherty  
 September 6, 1990  
 Page 5

(Note: the preceding conservation requirements should take into account the renewal limitation alternatives outlined above, and should be designed to assist renewal contractors in efforts to meet both required and voluntary reallocations under this Act.)

- o prohibit transfers of CVP water that would result in increased net diversions or depletions from the Sacramento/San Joaquin Delta, unless it can be shown that such transfers will result in significant increases in net benefits to fish and wildlife resources which utilize or otherwise depend upon the Delta in furtherance of the goals and objectives of this Act;

- o ensure that no transfer of CVP water will frustrate, and that all transfers of CVP water shall be consistent with, attainment of the Act's fish and wildlife objectives;

- o authorize the use of CVP facilities for the transport and storage of conserved and transferred water for fish and wildlife purposes in furtherance of the Act's fish and wildlife objectives;

- o establish a Central Valley Project Restoration Bank to provide carryover storage of conserved, transferred, and "surplus" [unallocated and interim] Project water, together with provisions which authorize the Secretary, in consultation with the State, the Commission, and other interested parties, to establish rules and regulations and to enter into agreements to operate the Restoration Bank in furtherance of the goals and objectives of this Act (and for other authorized purposes which are consistent therewith); and

- o authorize the delivery of transferred CVP water to entities outside existing CVP service area boundaries, provided that such deliveries and transfers meet all of the criteria and limitations outlined above; and

By design and intent, the above suggestions offer existing CVP water users and contractors the certainty they seek regarding future water supplies under renewed CVP contracts. Also featured are the components of a system of locally-controlled, incentive-driven water transfers which seek to minimize regulatory interference and maximize local reallocation benefits while nonetheless ensuring that needed reallocations can and will occur. These alternatives are made possible by the inclusion of certain minimum assurances regarding the protection and enhancement of Central Valley fish and wildlife resources at the time of contract renewal, and the fundamental avoidance of increased CVP commitments prior to attainment of the Act's goals and objectives.

We hope, in sum, that the above suggestions will help to strengthen the California Fish and Wildlife Protection Act as presently amended. We look forward to working with Congressman Miller and with other members of the Congress in the weeks ahead to realize the California Fish and Wildlife Protection Act's considerable promise.

Charlene Dougherty  
September 6, 1990  
Page 6

Sincerely yours,

*David Yardas*

David Yardas  
Environmental Defense Fund

*Karen Garrison*

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# ENVIRONMENTAL DEFENSE FUND

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February 10, 1992

## MEMORANDUM

TO: Dan Beard and John Lawrence  
FROM: Tom Graff *Tom Graff*  
RE: CVP: water policy reform

Both of you last week asked me to write a memorandum setting out some of EDF's views on CVP water policy reform, with a particular focus on how water marketing might fit in to a progressive piece of federal legislation. This memorandum is an attempt to respond to these requests. I hope you both, as well as Congressman Miller, will consider it the beginning of a dialogue. I expect that you will have questions. I hope that you will respond critically and that you will entertain the idea of some back-and-forth critique that might sharpen options to meet a range of important objectives.

I begin with the assumption that you share three principal goals in formulating federal water policy. Certainly, Congressman Miller's record in Congress reflects these goals. One is the protection of the natural environment. Two is a concern for equity, including assurance that project beneficiaries are paying something approaching the cost of serving them water. Three is a notion that current water needs, both consumptive and non-consumptive, throughout the state should be addressed by a modern federal water policy (existing plumbing permitting) and that the expiration of old CVP contracts provides an opportunity for Congress to prompt some reallocation both of the CVP's water supply and of the responsibilities to meet increasingly ambitious environmental objectives.

I believe water marketing can potentially be an important tool to help meet all three of these objectives. Properly applied (and limited) it also can meet a number of secondary objectives, including a key objective of all water users, namely the long-term certainty of their water supply.

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Protecting the Environment. Allowing the free exchange of long-term water rights, including federal water contract rights, has the obvious environmental benefit of reducing the demand for new environmentally destructive conventional water projects. As long as the price of purchased water remains below the cost of building a new project, which is likely to be for many years, a commitment to water marketing protects the environment from incremental damage. A more complex issue is whether a water marketing policy can be developed that restores or enhances environmental values which are degraded by current water management policies. It may be that these mitigation/restoration/enhancement objectives can be achieved through more direct means, by legislation, regulation and/or court action mandating their implementation. Certainly, environmentalists will continue to pursue all these avenues aggressively, including in the pending legislation. For various reasons, however, we may not be able to get all we want by such mandatory (and probably uncompensated) reallocation. To some extent, therefore, we may need to rely on environmental water purchases to fill out our projected future environmental water portfolio. I will return to this point later.

Taxpayer Equity. If there is one cause with which Congressman George Miller has been most closely identified over the last 18 years it is the cause of fighting taxpayer rip-offs in federal water programs, particularly by large corporate agribusiness concerns. As you know, there have been a number of modest successes in the long campaign to bring some fairness and economic rationality to BuRec policy. Full and current recovery of operation and maintenance costs is now mandated by law. Larger farms than 960 acres are by law required to pay full cost for their water. On the whole, however, federal water project beneficiaries still get a great deal. Agricultural users legally still pay no interest and have long amortization periods in their repayment of project capital costs. And abuses persist among large farms who have claimed to comply with the 960-acre limitation.

Giving the beneficiaries of these historic (legal and illegal) subsidies an additional windfall rankles.

I would nevertheless argue that the environmental and economic benefits of the free transfer of federal water contract rights is worth the resulting (inequitable) benefit contract right holders would thereby receive.

Fortunately, however, there are policies available to Congress that capture most of the benefits of water marketing, yet which also reduce (but do not eliminate) the windfall to existing contract right holders. I see three major options. One is to reduce the subsidies received by the existing beneficiaries by reducing the amount of water for which they may contract upon expiration of their existing contracts. Two is to reduce those subsidies by increasing the price of the water they buy upon contract expiration. Three is to recapture some of the gains implied in a transfer of a federal water contract right by means of a transfer tax.



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The last of these policies, of course, contains a built-in disincentive to transfers. The higher the transfer tax imposed, the fewer transfers will take place, and also likely the higher the price of transferred water. (This may not be a major problem for prospective urban buyers. It could be a major problem for prospective agricultural or environmental buyers, unless they were exempted from the tax.) With the number, sale and location of transfers uncertain, the level of environmental benefit from a transfer tax would also be uncertain. I would argue therefore that, to the extent it is politically feasible to do so, protection of the taxpayers' interest be accomplished at the time of contract renewal, not when contract water is later transferred.

From a strictly environmental perspective, the ideal policy is probably a water take-back at the time of contract expiration. This reduces the subsidy received by the project beneficiaries, although it does not directly enhance the U.S. Treasury. But it may provide additional water for the environment. Alternatively, some or all of the recaptured water may be sold to those willing to pay more for the water than the existing beneficiaries. In essence, under this latter scenario, the taxpayers capture the economic "rents" in the reallocation of water from lower to higher valued uses. Conceptually, this is what was attempted in the realm of power contracts at the time of the Hoover bill and the "Boxer Rebellion" in 1984. It appears to me to be legal, despite the "taking" argument others may raise against it. Congress seems to me to have retained the power to change contracts upon their expiration; hence, no Constitutionally-protected property right is infringed by a "take-back." But the political feasibility of this approach is questionable (I know it's been eight years since Hoover and the times and circumstances are different, so I may not be right about this) and the equitable expectations of the existing beneficiaries may deserve some weight.

This leaves the third and from my point-of-view the most desirable option: don't "take back" the water, at least in an obvious way; rather, increase its price. This reduces the subsidy to the beneficiaries. This also increases the return to the taxpayer, and, Budget Reconciliation Act permitting, it potentially creates a revenue stream that can be used for environmental water purchases or other environmental improvements. Moreover, once these equitable and environmental objectives have been achieved, the contractor is then free to sell his (her) water at a profit, albeit a lesser profit. No transfer tax need be required under these circumstances; hence no disincentive to transfers. In fact, the higher price of water to the existing beneficiary may even impel him to consider a transfer more actively.

A variation on this option is to increase the price of contract water on an increasing block basis. Thus the historic large subsidies might be maintained for some of a particular contractor's water, but as the contract approached the historic contract amount the price would rise, perhaps to a

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full cost rate, perhaps to some kind of State Water Project equivalent rate, and ultimately perhaps to some other rate that discourages use on any field crop like rice, cotton, or alfalfa. Under an increasing block tiered pricing scenario, upon contract renewal a contractor might choose either to pay or not to pay for some or all of the water in its tail block. To the extent a choice was made not to pay and therefore to forego purchase of some water, the effects would be similar to the "take-back" option described above. To the extent the contractor agreed to pay the higher prices, the effects would not differ from the general higher price scenario just described.

From the contractor's point-of-view the fact of having a choice whether to pay or not is likely to be at least somewhat preferable to having no choice at all under the take-back option. Whether this renders the proposal politically feasible, I don't know, but I hope so. I do think it is preferable overall to the proposal in S. 484 to vary the amount of the "take-back" inversely to the length of the renewal contract term.

Serving the Whole State. There are many reasons to open the CVP to all those parties of the state which can be reached by its existing water plumbing system. The environmental benefits of displacing new project demand have already been noted. Another benefit which is not necessarily sufficiently appreciated by those who would be beneficiaries of such a change in federal policy is that they have resources, principally financial, which creative legislation might employ to help solve some of the environmental problems caused by the CVP (and by others) and which are beyond the capability and/or willingness of the CVP's existing contractors to remedy. The creation of a market in federal water would not only be a windfall to the existing beneficiaries. In a sense, it also is a windfall to potential future beneficiaries whose access to the project has previously be limited. Arguably if the whole (or at least most of the) state is going to acquire a new interest in the CVP's riches then it also should acquire an interest in the CVP's liabilities.

One way to cause some of those liabilities to be met is a transfer tax. However, as noted above, transfer taxes are a disincentive to transfers and promoting fewer transfers is likely not in the environment's interest.

An alternative way to meet some of these liabilities is to promote a general water use tax (perhaps statewide, perhaps better limited to areas potentially served by the CVP unless the state chooses voluntarily to expand its reach) which raises revenue to meet environmental objectives and which recaptures for public purposes some of the enhanced value given to those areas of the state not previously served by the project.

Requiring such a broad-based use tax in federal law may be difficult. On the other hand, it is also the case that the CVP is not alone among water projects in California in having caused unmitigated environmental



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 Page 5

impacts. Expecting the CVP alone to solve the environmental problems of the Sacramento/San Joaquin/Bay/Delta system is unrealistic. Moreover, while the CVP, in at least a relative sense, is water-rich, the SWP is water-poor and cash-rich. It is the SWP's urban customers who are among the most anxious potential water buyers in the state. They should be able to afford significant financial contributions to the solution of the state's aquatic environmental problems, in exchange for the right of access not only to the CVP but to water locally appropriated and developed by others in the state.

Conclusion. Exactly how we best access in particular the MWD's financial resources is unclear to me. One of the problems with the way in which the water negotiations of the last year (including both the 3-way and the more recent CVP-reform-inspired talks) have gone is that the environmental and the agricultural negotiators have only fleetingly had the chance to develop joint proposals in the absence of the urban negotiators. The opportunity may still exist in the House of Representatives, however, for Congressman Miller to collaborate with Congressmen Dooley, Lehman and Fazio to find a way to assure that urban interests, particularly southern California urban interests, make their fair contribution to the solution of the state's water woes.

Loose Ends. There are still many. Not only do we have to brainstorm regarding a means to bring the resources of the state's urban water users to bear on the solution to the state's aquatic environmental problems, but major details in the rest of the program outlined in this memo need to be fleshed out. What is the best tiered pricing scheme? Should growers be allowed to sell water even if their district boards object? (I say yes.) How long should the renewed contracts be allowed to run? What happens at the end of the next renewal term? (I suggest both the contractors and any potential water transferees can negotiate whatever future deals they like, but Congress should specify that, at the end of the renewal term, however long it is, it will decide what to do with the CVP's water.) What mechanisms, if any, should be included to deal with the third-party impacts, including the environmental impacts, of proposed transfers? What is the best mechanism for reserving environmental water that will not be subject to contract at all? Is a different pricing scheme needed for the Friant system than for the "integrated" part of the CVP? Should special rules be set up for the west side drainage-impacted lands? Where, if anywhere, does mandatory conservation fit in? The list could go on, but I am going to stop here and send you this memo. If you tell me I'm way off base, all these questions become moot. If, however, you think this whole scheme is worth developing further, let me know, and I'll try to help with details.

I do appreciate your solicitation of my views. I hope this has helped.

TJG:mjg



THE WHITE HOUSE  
Office of the Press Secretary

For Immediate Release:

October 30, 1992

## Statement by the Press Secretary

The President today signed H.R. 429, the Reclamation Projects Authorization and Adjustment Act of 1992. The bill passed both houses of Congress by overwhelming margins -- winning approval in the Senate by 83 to 8 and in the House by voice vote.

The President noted that the final legislation approved by the House-Senate Conference committee differed in several important respects from original Miller-Bradley bill (H.R. 5099) to which the President had previously stated his opposition. The title of the final bill dealing with the Central Valley Project (CVP) in California was amended to reduce adverse impacts on California agriculture that the original Miller-Bradley bill would have had. For example, the bill reduced the amount of water set aside for fish and wildlife from 1.5 million acre-feet per year to 800,000 acre-feet per year, eliminated a proposed 15 percent capital gains tax on water sales by farmers, included a provision which reduced the fish and wildlife set-aside by up to 25 percent in a dry year, and removed provisions which would have allowed virtually unlimited citizen suits against farmers.

The President stated that he nevertheless remains concerned about the potential effect of CVP provisions of the bill on California agriculture. The President stated his intention to seek legislation in the next Congress that would help rectify any adverse impacts by adopting the positive provisions of the legislation sponsored by Senator John Seymour.

On balance, the President stated that he is pleased to sign legislation which provides significant economic and environmental benefits throughout the western United States. The bill includes authorization of or provisions related to several projects which the Administration has long favored, including the Buffalo Bill Dam in Wyoming, the Central Utah Project, the Leadville Tunnel treatment plant in Colorado, the Cedar Bluff Project in Kansas, and projects in other states. The bill also provides for the establishment of a voluntary system of water transfers of CVP water -- on a voluntary basis -- that represents an important innovation in the development of market-oriented water policy.

# # # # #



## THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 30, 1992

## STATEMENT BY THE PRESIDENT

Today I am signing into law H.R. 429, the "Reclamation Projects Authorization and Adjustment Act of 1992."

The Act will make a major contribution to the development and reform of water resources in States throughout the West. It is the product of years of debate and compromise in the Congress. This bill will provide substantial economic and environmental benefits throughout the West.

H.R. 429 authorizes numerous water projects in the western States that the Administration has supported. Included among the projects in the bill are the Buffalo Bill Dam and Reservoir in Wyoming; the Central Utah Project; South Dakota water planning studies; the Cedar Bluff Unit in Kansas; the Vermejo and Elephant Butte Projects in New Mexico; the Glen Canyon Dam affecting the Grand Canyon in Arizona; the Sunnyside Valley Irrigation District in Washington; the Platoro Dam and Reservoir and the Leadville Mine Drainage Tunnel in Colorado; the Mountain Park Project in Oklahoma; and the Central Valley Project in California.

Several of the provisions that substantially reform the operation of the Central Valley Project in California are less flexible and more intrusive on the rights of the State of California and current project beneficiaries than I would have preferred. Nevertheless, the final bill includes several substantial modifications to the original House-passed version. These modifications will ensure that the fish and wildlife objectives of the legislation can be met in a manner that maintains the viability of other important uses to which CVP water is now devoted. Moreover, by establishing a voluntary system of water transfers -- on a willing seller basis -- H.R. 429 presents an important opportunity to increase the availability of water for uses which will best accommodate California's growth. A market-oriented water policy will create new jobs in the California economy.

I am concerned, however, that a number of provisions, if broadly construed, could violate the basic principle of Federal Western water policy -- State primacy. A fundamental principle of my Western water policy is that the Federal Government must respect the primary role that individual States have in shaping and controlling their own policies regarding water use and allocation. An individual State is best positioned to assess its needs and to accommodate competing interests. Except in

those instances where an overriding Federal interest or an interstate conflict is present, States should retain primacy in fashioning their policies regarding water. Accordingly, I am directing the Secretary of the Interior, in implementing this legislation, to ensure that its provisions are conducted with due deference to State primacy. In addition, in implementing section 3411(a), I am directing the Secretary of the Interior to consult with the California Water Resources Control Board before reallocating water to implement title XXXIV, even if such reallocation might be allowable under the current conditions in existing permits or licenses. Lastly, I intend to submit

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legislation in the coming Congress which is substantially consistent with that introduced by Senator Seymour (S. 2016) in the 102nd Congress. This legislation has as its primary objectives the mitigation and enhancement of fish and wildlife resources in the Central Valley of California and the orderly allocation of available water supplies while maintaining the productivity of the Bureau of Reclamation's Central Valley Project.

H.R. 429 also contains certain provisions that warrant careful construction to avoid constitutional concerns. First, section 301 establishes a Utah Reclamation Mitigation and Conservation Commission that would formulate the policies and objectives for the implementation of certain projects authorized by the Act and administer expenditures of substantial Federal funds. The Commission members are to be appointed by the President from lists submitted by certain members of the Congress, the Central Utah Water Conservancy District, and the Governor of Utah. In order to avoid any conflict with the Appointments Clause of the Constitution, I will interpret the Act to provide for the appointment of members of the Commission after due consideration of the recommendations of those submitting lists, and not to inhibit my discretion to request from those groups and individuals the names of additional potential nominees.

Second, section 301(h)(3) permits the Commission to "secure directly from any department or agency of the United States" information necessary to enable it to carry out the Act, and requires the heads of all agencies and departments to comply with a request for information from the Commission. I will construe this section consistent with my authority to supervise and guide executive branch officials, and to control access to information the disclosure of which might significantly impair the conduct of foreign relations, the national security, or the deliberative processes of the executive branch or the performance of its constitutional duties.

Third, section 3201 establishes the conditions under which a South Dakota Preservation and Restoration Trust may receive and disburse Federal funds. Under the Act, such a trust must be governed by a five-member Board of Trustees, three of whom would be appointed by the members of the South Dakota congressional delegation, and one each of whom would be appointed by the South Dakota Academy of Sciences and the Governor of South Dakota. Under the Supreme Court's decision in Washington Metropolitan Airports Authority v. Citizens for the Abatement of Aircraft Noise, Inc., such a board exercises sufficient Federal power to subject it to separation of powers scrutiny. The Board, moreover, performs functions that are executive in nature, and therefore agents of the Congress may not manage its affairs. In addition, all members of the Board appear to exercise significant governmental authority, yet are not appointed in a manner consistent with the Appointments Clause.

For all these reasons, I direct the Secretary of the Interior, in consultation with the Attorney General, to propose legislation to remedy these constitutional defects. Such legislation must be effective prior to the expenditure of any appropriated funds.

Fourth, section 3405(a)(1), which purports to give contracting districts or agencies the authority to review and approve certain transfers of water under standards established by the Act, could be construed to permit the exercise of Federal executive power by the districts or agencies, which are not

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composed of individuals appointed pursuant to the Appointments Clause of the Constitution. To avoid constitutional questions that might otherwise arise, this section must be interpreted so as not to vest such power in those districts or agencies. Accordingly, I will interpret the role of these bodies under this section to be an advisory one.

Notwithstanding the concerns I continue to have with certain provisions of the bill, I am signing H.R. 429 so that the establishment of water markets in California, and the bill's numerous beneficial water projects, can move forward without further delay. On balance, these projects will better enable the citizens in our western States to manage one of their most precious resources.

GEORGE BUSH

THE WHITE HOUSE,

October 30, 1992.

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Malca Chall

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Wage Rate Analyst with the Twelfth Regional War Labor Board, 1943-1945, specializing in agriculture and services. Research and writing in the New York public relations firm of Edward L. Bernays, 1946-1947, and research and statistics for the Oakland Area Community Chest and Council of Social Agencies, 1948-1951.

Active in community affairs as director and past president of the League of Women Voters of the Hayward area specializing in state and local government; on county-wide committees in the field of mental health; on election campaign committees for school tax and bond measures, and candidates for school board and state legislature.

Employed in 1967 by the Regional Oral History Office interviewing in fields of agriculture and water resources. Also director, Suffragists Project, California Women Political Leaders Project, Land-Use Planning Project, and the Kaiser Permanente Medical Care Program Project.

















